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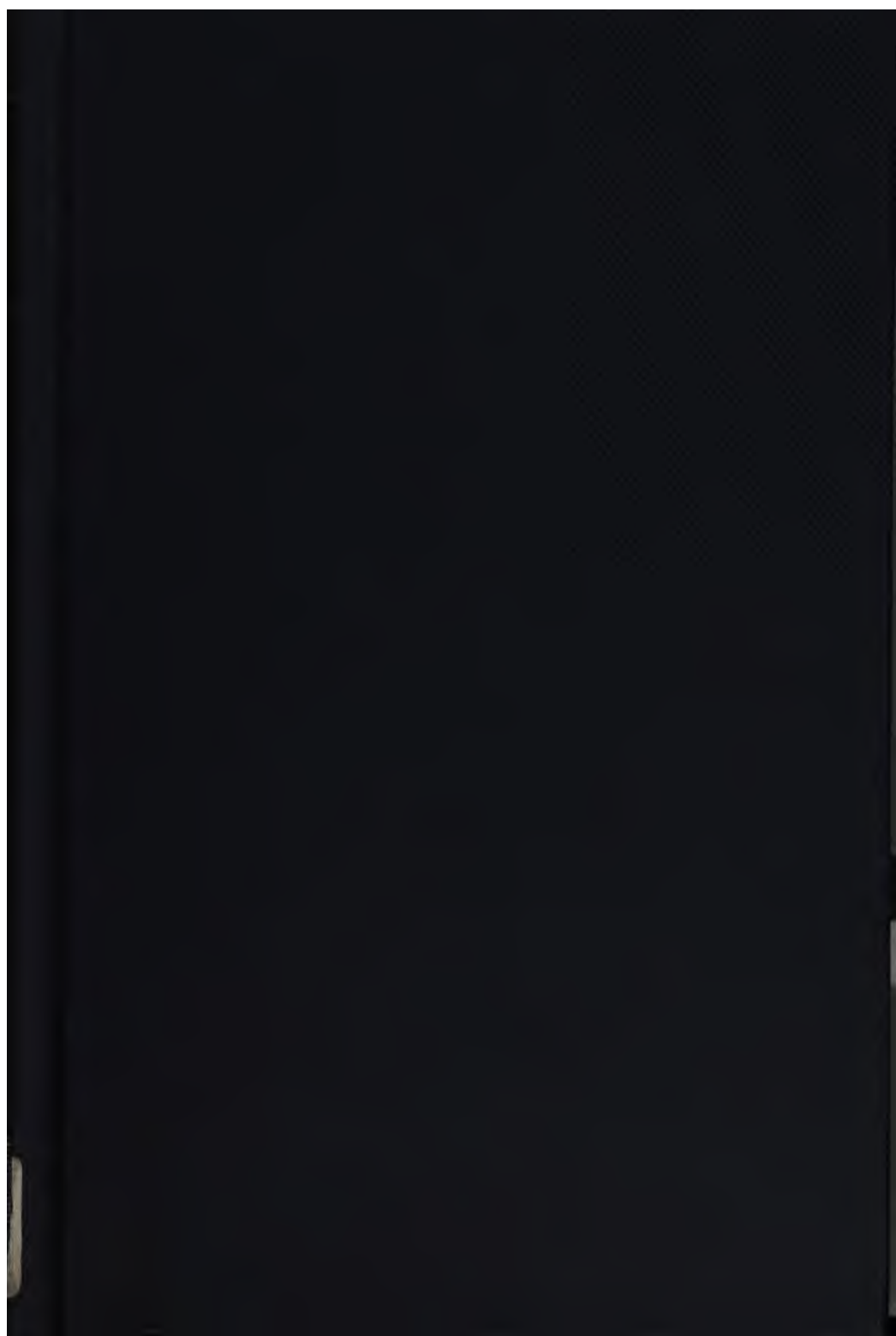
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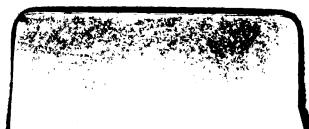
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AN
INTRODUCTION
TO THE
DEFENCE
OF
ABNER KNEELAND,
CHARGED WITH
BLASPHEMY;
BEFORE THE
MUNICIPAL COURT, IN BOSTON, MASS.
AT THE JANUARY TERM, IN 1834.

BY ABNER KNEELAND,
THE DEFENDANT.

BOSTON:
PRINTED FOR THE PUBLISHER.

1834

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INTRODUCTION.

WRITTEN BY THE ACCUSED, BEFORE THE TRIAL.

As the following trial is to be published, and not knowing yet how it will terminate,—whether I shall be condemned as a *blasphemer*, or acquitted as an *honest man*,—it is but an act of justice I owe to myself, as well as to the public, to state the whole amount of my offending. To do which, I must republish the articles, of which, the extracts set up in the indictment constitute but a very small part.

To know the full bearing and import of any paragraph, we must take it in connection with the whole of the article in which it is found. Nothing perhaps would be more disgusting to most people, who had not been accustomed to behold such an object, than a human eye, when separated from the other features of the face, where it formed a just symmetry, though it should be taken from the countenance of the most beautiful female that ever graced the most brilliant assembly of ladies. So you may often select a paragraph from a well written article, and take it away from the whole piece, and hold it up to view in its naked deformity, which will appear very disgusting indeed ; when the same paragraph, viewed in connection with the whole article, will be considered as very passable, to say the least. This is said in extenuation, though not intended as a justification, of the first article in the indictment ; or of the first paragraph of the article, “ No. 3. On Prejudice.” I say not as a justification, for I do not approve of the paragraph myself ; it is an offence against taste and manners ; but the term used is a scientific term, not the vulgar term used in the bible to express the same idea, (see Deut. xxiii. 1,) and therefore is no more obscene than any, and every medical work, that treats on the genital organs ; much less can I perceive any thing blasphemous in it. But let it be what it may, I am as innocent of writing or publishing it, except it be by some technicality or quibble of the law, as though it had never been written ; for I never saw it, to my knowledge or belief, till I heard of it through the medium of some of my own subscribers who found fault with it ; of course, not till several days after it was printed in the *Investi-*

gator. Whether I am to suffer either pains or penalties for such a circumstance as this (for certainly it cannot be considered an act of mine) my country must judge.

Here follow the three articles in succession, from the (N. Y.) Free Enquirer, copied into the Boston Investigator. The first is in the Investigator of November 15; the second, of December 13; and the third of December 20; which also contains the other two articles.

COGITATIONS OF AN INFIDEL.

BY BEN KRAPAC.

No. 1. On the Soul.

A belief in the existence of an immortal soul, distinct from the matter of the body, has long been entertained by a large portion of the human race. The origin of this doctrine it is now impossible to ascertain; nor is it a matter of much consequence in an examination of the opinion, for, at the present day, the antiquity and the truth of an opinion are considered distinct questions.

The great age of a scientific or philosophical idea, is a damper to its reception by a well cultivated mind rather than a recommendation.

I proceed, then, to examine the truth, not the origin, of the doctrine of an immortal soul. That I may not expend my powder in the destruction of 'a man of straw,' I shall state what I understand by the term 'soul.' Webster's definition, I think, gives the general conception of the word. It is, he says, 'The spiritual and immortal substance in man, which distinguishes him from brutes; that part of man which enables him to think and reason, and which renders him a subject of moral government.'

2. 'The understanding, the intellectual principle.'

3. 'Spirit; essence; chief part.'

It is the essence or phantom described in the above definition, whose existence I dispute.

The universality of the belief in a soul and a future state, or a distinct and immortal part of man, is said to be an evidence of the truth of the belief: for, it is argued, since the doctrine is entertained by so many people of different religions and nations, having little or no connexion with each other, the idea must be innate,—it is the result of an instinct depending on our consti-

tution ; and as the general results of an instinct are always correct, we are compelled to acknowledge that the generality of the opinion in question is at least a strong argument in favor of its truth. Or, to state the conclusion in a more orthodox phraseology ;—as God would not mislead his creatures by impressing them with the belief in a lie, and as the universality of the dogma shows that it is implanted in man by his Creator, we must conclude that the dogma is true.

This argument I object to, since it proves too much. Philosophical, political, moral and theological errors have, for ages, prevailed throughout the most civilized parts of the world. The follies of witchcraft, magic and astrology, have received full credence among people the most dissimilar, and in nations that have had no intercourse with each other.

They have flourished in Asia, Africa and Europe, and the discoverers of the New World found soothsayers and magicians in high repute among the Indians. If the argument be true, all these exploded doctrines must be revived. But as sure as witchcraft, magic and astrology are impositions, so sure is it, that the argument for the immortal soul, founded on general belief, is a bad one.

I might oppose to the above argument, one of the same class, and, as I think, of a stronger kind. If there is any feeling to be found among all people and at all times, it is the desire of life, or dread of death.

People may be taught from childhood that death will take them to heaven ; that they are miserable in this world, but will be happy in another ; still they wish to live. They will often cling to life when all probability—almost all possibility—of comfort is gone. Does this show an instinctive belief in a future state ?

That there are exceptions, I do not deny.

A sick fanatic may be persuaded to believe that death is but a pleasant passage to happiness unbounded. A Mahomedan, when told by the Musti, that all who die in a certain war will go to the land of 'houris,' will, no doubt, in his eagerness for the promised bliss, even court death. A man of strong mind may desire death, when he is convinced that life can bring him no more happiness.

But what do all these exceptions prove ? Simply, that there is a mania which causes its victims to desire death, which may be excited with comparative ease in the ignorant and passionate, but with great difficulty and only by the aid of violent disease in the intelligent of any nation, even among the 'elect'

Calvinists. Or, at best, it only proves that a strong mind may for good reasons overcome the desire of life.

Finally. I think I may state that the most universal maxim is this—'while there is life there is hope,'—but after that, God help us. This opinion I set up in opposition to the general wish to get into another world—or out of this.

The next position which I shall examine is one of a poetical rather than of a philosophical character. 'Man,' says the imaginative defender of souls, 'has a constant yearning after knowledge, which increases as he is fed; he has too, an eagerness, a craving, for things which he never can obtain in this life: then why is appetite given to him, if it is not intended to satisfy it hereafter. The capacities of our souls are never filled,—we learn, we hoard up knowledge,—we—suddenly die, and all is lost! Is it to be supposed that the desire and power of obtaining knowledge are given to us only to be taken away again; and are we urged to do all this labor that it may end in nothing? God forbid! Nature does not create powers that are never to be expended, or faculties never to be applied. It is contrary to all experience: nothing is made in vain. We must then believe in a hereafter, where the soul will receive nourishment suited to its increasing capacity; and this is heaven!'

Let us examine this argument. If it be a sophism we can best expose its weakness by pointing out the conclusions which may be legitimately deduced from it.

Temperate men often die before their stomachs are half worn out. Here then is a loss or waste of digestive power, unless there be another world where the force may be expended. If nature were so exact in the appropriation of means, she would have given such men stomachs that would have failed just as they died. So we might argue, from the premises, with regard to every function, however low, in man, beast, or vegetable.

The logic even holds with inorganic bodies. There is, for instance, some portion of sulphuric acid in the world which has the power of producing certain compositions and decomposition, and yet that acid will itself be decomposed before it has produced any of these effects. Now, let me ask, why was this power given to the acid if it was never to be exerted? Surely there is another world where the elements of this unfortunate acid will be reunited that they may forever exert their powers of composition and decomposition '*pour la gloire de Dieu.*'

It is unnecessary to pursue this view any further. One word as to its origin.

Nature operates by general laws, and the error in question arises from the vain system of applying the laws of man to God or Nature. Does not the grass grow where there are no cattle to eat it? Does it not rain more on the seas and lakes, than it does on the deserts of Arabia, where man and beast are choking for want of water?

There is another point, in the argument above alluded to, which requires a more careful examination, since it seems to have much weight. It is this : that our capacities or the capacities of our mind or souls, always increase by use instead of wearing out like what are termed the physical powers of man.

This opinion, though generally received by the most intelligent part of the community as an established fact, is generally believed by physiologists to be a positive error.

In opposition to it, I present the following argument.

When a child is born, it is supposed not to have a single idea except those formed by its feeling the ideas of the womb ; by tasting the liq. Amn. ; or by sensations attending its birth. As it exercises its senses, ideas are gradually accumulated ; they 'grow with its growth and strengthen with its strength.' The perfection of the senses, the degree of their exercise, and the developement of the brain, determine the nature of the mind, or soul, which that being is to have.

Let us now suppose that the child has become a man, and that the man is in the decline of life—getting old and infirm. The old man's eyes begin to fail, he cannot see to read ; he is becoming deaf, his sense of feeling is blunted. In fine, all the senses together bring him but few impressions, and those are so feeble as to produce no permanent effect. But still, you say, he has the stock which he accumulated during the prime of life, and with these he may think, reason or judge. If the soul were distinct from the body, and it had been constantly enlarging while the senses were perfect enough to convey new and lively impressions to it, it ought at least to retain its maximum capacity after the decay of the body has commenced. But alas ! how far is this from being the case. The old man talks incoherently—he grows cross—his affections are gradually wizening away—his judgment is going—and he is in his second childhood.

Where is the imperishable,—the unalterable soul? We will follow the old man a little farther. He is on his death bed, surrounded by his friends. He does not recognise the members of his own family. You may tell me that his sight is too imperfect ! But if the soul be still perfect, he should know

that his sight is gone ; his soul ought to know from the want of the usual communication by the senses, that the man is about to die.

The old man is able to talk, for he is gabbering all the time ; he talks of the scenes of his past life—even of his childhood. Why does he not talk to, and of, those who are most likely to be around him. The unchangeable soul ought to tell him his family is as a matter of course about him, and that every member of it would be delighted to receive a single remark from him. But not a word of consolation does he offer.

Perhaps he cannot control his tongue ? This brings us to the final argument. His tongue and breath are moved by a diseased stimulus (i. e. convulsively) ; or they are moved by the action of the brain ; or finally by the soul.

If the action were merely convulsive, would he once in a thousand times make a distinct articulation ? Still less a whole sentence ? The chances are infinite against it. We might as well expect a man in a fit, with a pencil in his hand, to write a number of sentences during his random struggles, or to finish a drawing.

Does the soul produce the discourse ? I think not ; because the remarks are not suited to the occasion, though the man may have been unusually sensible ; nor are they always connected, though the man, or soul, may have been a most acute logician. If a soul is not the agent then it must be the brain.

The actions of the brain must, then, be sufficient to produce a speech, be it good or bad. This is all I ask ; for if the brain can produce such results once, it can produce all that we require, and the theory of a soul, besides being *pure supposition*, is entirely unnecessary.

Again ; some men are born without the usual developements of the brain ; they want the most important faculties of the mind or soul ; sometimes they are inferior to the brutes. Have such men souls ? You may answer 'yes.' So, too, should I ask you whether all dogs have horns on their heads, you might answer 'yes.' But you have never seen or felt the horns on dogs' heads, nor have you any reason or evidence direct or indirect of their existence ; and I think it just so with regard to the mind of a perfect idiot. I have seen dogs and idiots, and I have just as little reason to suppose the existence of an iron hammer or of a soul in the idiot's head, as I have to suppose the existence of a pair of horns on the dog's head. *After your answer, I have the evidence of your word for the existence of horned dogs, and you, perhaps, have the evidence of a person for the existence of a mind or soul in an idiot.*

Let us now take a healthy man in the prime of life. A blow on the head for a time deprives him of all consciousness. In the meantime neither the man himself, nor any body else, has any evidence of the existence of his faculties. Presently he recovers; his faculties all return, but he has no recollection of the time passed in his stupor. Where was his soul, or would it not count time? If an accident or disease injure a certain part of the brain, a certain faculty or part of the soul disappears; should the part recover, the faculty returns; if not, the faculty never returns. Where does it go to? Finally, when the brain is completely destroyed, what becomes of the mind? When the brain is diseased, the mind is diseased; as the brain decays, the mind decays; and when the brain dies, the mind—perhaps dies too?

Before concluding, I shall remark, that no man has ever felt, heard, seen, smelled, or tasted a soul. Its existence is therefore mere supposition. I shall add another remark about the necessity of this supposition. When the string which suspends a ball is broken, the ball moves towards the earth. When a seed is put in a warm and moist soil it vegetates. When a well organized man is in health he thinks, wills, judges, &c. If you ask me why any of these things take place, I can only answer 'because they do.' Does it help the matter to say, that the ball approaches the earth because it has a soul; that the seed grows because it has a vital principle or soul; that the man thinks, &c. because he has a soul? We know equally well that all three phenomena do take place, but they are equally inexplicable, and the introduction of a few words, or sounds, does not enlarge our knowledge.

The existence of an immortal soul is then, I conclude, an entirely unnecessary supposition, and is, besides, strongly contradicted by known truths.

No. 2. *On Faith.*

"Qu'est-ce que la foi? La folie."—*Voltaire.*

When Voltaire answered the question 'What is Faith?' by the word 'Folly,' he sprung to the conclusion to which I shall endeavor to lead my readers.

FAITH is the faculty (or the want of faculties?) which enables its professor to believe things which are in opposition to, or above, or below his reason. It enables the religionist to give

credence to those parts of his system, which are beyond the ken of his senses, or his reason. The term is rarely used in any but a religious sense, and it is this kind of faith that we propose to examine in the present essay.

By faith, dogmas like the following are received as undeniable truths :

‘That we are in a ruinous state ; that we must perish without redemption ; that we deserve to perish are plain, incontrovertible facts. (!) That we must be born again in order to see the kingdom of God, and that we are ‘by nature,’ i. e. in our unregenerated state, ‘children of wrath,’ is clear. (!!) That the sin of Adam is connected with all our evils in some way is certain. (!!!) More than this, i. e. the *manner* in which this connection is occasioned, we may dispense with knowing, until we can find it taught in the Scriptures.’---*Stuart’s Comment. on ‘Epist. to the Rom.’*

To my mind, the above extract is a mass of absurdity ; to the mind of a Calvinist, it is a collection of established truths ; and accordingly Professor Stuart states them in the same dogmatical manner that a mathematician would say, ‘two and two are four,’ or ‘every point of the circumference of a circle is equally distant from the centre.’ Neither Mr. Stuart nor any of the sect to which he belongs, pretend to say that the propositions contained in the extract given above, can be supported, much less established, by reason. As I have nothing but my imperfect senses, and ‘feeble reason,’ to distinguish between truth and falsehood, I cannot explain how others are convinced without the use of the guides. Nevertheless, as my freedom from cancer does not authorise me to deny its existence in less fortunate beings, so my want of Faith does not induce me to disbelieve its presence in others. Its effects are too obvious. By examining them we shall endeavor to point out the nature of their cause.

Faith, as was mentioned before, is the faculty which enables a religionist to believe those parts of his creed which are in opposition to, or above, or below his reason.

Christians use the term Faith, in contradistinction to mere reason, or the moral sense.

Mahomedans also have a term,—*Imam*,—corresponding to ‘faith,’ and which they use in contradistinction to *Decu*, which means practical religion.

There is, I believe, in every religion, a term which corresponds with the Christian ‘Faith,’ and Mahomedan ‘Iman’ ; and it is by means of this Faith that every sectarian believes or

professes to believe, those parts of his system which other sects disbelieve, and which he himself does not pretend to understand.

Suppose we should bring together two, or more, intelligent men, from different parts of the world, and read to them any religious creed or system, which they never heard of before, and then ask them separately, how much of it they believed; I have no hesitation in saying that they would all select nearly the same portion as credible, because reasonable; and reject the remainder as incredible, because unreasonable. Let us now call on a believer of the creed in question, and ask him to explain it. He will tell you that one part of his creed, being founded on reason and the moral sense, *must* be and is believed by all intelligent beings; but that the other part, which is the most important, and mysterious, and awful, is obvious to the eye of faith alone; and must ever be 'as foolishness' and 'a stumbling block' to those wanting this precious gift.

Let us now ask the gentlemen to whom we read the creed whether they have no faith?

'Certainly I have!' replies one. 'I believe in the Holy Catholic faith, the communion of Saints,' &c. &c.

'And I,' says another, 'am a pious Moslem. There is but one God and Mahommed is his Prophet. I believe that Mahommed was born circumcised, and rode to heaven on the Jackass 'Borak,' &c. &c.

'And I,' adds a third, 'am a true Parsi. I believe that Zoroaster was born in innocence—that as soon as he came into the world he burst into a loud laugh, and such a light shone from his body as illuminated the whole room,' &c. &c.

Here is plenty of Faith; then why do they not believe the system which we have just read to them? Simply because it is not *their* faith. They all agree as to what is reasonable, but faith is different in every land. Two men of different religions though both blessed with so much faith as to have scarcely any reason left, cannot agree on a single common principle. Truly, faith is a tree that beareth not only much fruit, but all kinds of fruit: potatoes on one limb, and pine-apples on the next.

From what has already been said, we may consider every creed, or religious system, as consisting of two distinct parts.

1. So much of the system as is founded on reason and the moral sense.
2. That portion which cannot be understood as depending on either reason or the moral sense.

A cursory glance at either the present or past state of the

world is sufficient to prove that the intelligent of all sects and nations will be nearly unanimous in assenting to the truth and propriety of the first divisions of all creeds ; and that no two will assent to the second division of any one system.

Moreover, we shall find that each sect will ridicule those of different faith ; and that creed, whose 'incomprehensible portion' is the largest, will be most laughed at by the others.

Lutherans are astonished at the credulity of Catholics ; Protestants wonder at the credulity of Lutherans ; Unitarians laugh at the faith of Trinitarians ; and Infidels laugh at them all. If we present these sects in the inverse order, we shall find the Catholic horrified at the hardihood of the Lutheran, who is shocked that the Protestant should reject any of Luther's articles ; and the Protestant in his turn regards with equal or greater horror the Infidel who dares to disbelieve all their mysteries.

It is truly observed by Mr. Bailey, in his admirable essay on Cause and Effect, that every religious sect regards those of *greater* faith with a feeling allied to pity or contempt, and those of *less* faith with a degree of horror or hatred.

To believe more than they do, is a weakness willingly pardoned ; to believe less is an insult to their understanding, which they cannot forgive, though it be a compliment to their faith which they *pretend* to place above reason.

The observations already made show that no sect puts any faith in 'the faith' of another sect. To this we may add, that 'the faith' of each individual depends on the sect in which he happens to be born and educated.

The opinions of a man on ordinary or reasonable subjects depend on his natural abilities and the degree of their cultivation, but his 'faith' depends on nothing but the time and place of his existence.

What consequence can be attached to the results of such accidental circumstances ? What merit or disgrace can attach to any one on account of acts or opinions settled long before his existence ?

To illustrate the effects of Faith, and the difference between Faith and Reason, I will adduce a few examples principally taken from Christianity.

Christians generally profess to believe that God required only six days to make the world ; but that four thousand years were necessary for him to redeem it from the hands of Satan, who held it during that period ; he having obtained it by an ingenious contrivance in which he outwitted the Almighty.

This redemption he effected by giving up his only Son to be killed by the Jews. This son is regarded by some Christians as God himself, and by all Trinitarians as a part of the Godhead.

In plain language, the Christian scheme of redemption amounts to this: Mr. Smith committed a crime in Asia six thousand years since, for which Mr. Brown, who died in New York yesterday, should and would have been roasted forever, had not Mr. Thompson been hung in Syria two thousand years ago.

Even this great scheme has, say they, failed to save more than a fraction of the human family.

With such a foundation what must be the superstructure! A few selections from the most prominent of the Christian creeds or 'articles of faith' is all that I shall offer on this subject.

The Catholics believe that the bread and wine on the communion table, though obtained from a common bakehouse and wine cellar, are, after consecration, literally the flesh and blood of Christ or God. This they eat to obtain salvation. A cannibal is regarded with horror, but to eat God is a Christian act.

The Calvinist believes that a large portion of mankind has been destined from the commencement of the world to eternal damnation or punishment; and that a smaller number have, without regard to their acts, been elected to the endless joys of heaven. These things, they believe, were ordained by a just and merciful God.

All Protestants will tell you in the same breath that God's 'mercies' and 'flames' are everlasting.

Some of Luther's immediate followers believing that 'faith' alone was necessary to salvation, determined that good works, by showing an impious independence of the Redeemer, were rather obstacles to salvation than otherwise.

Such are some of the dogmas established by faith. Comment is impossible.

Perhaps a few instances from the benighted heathen world, may be advantageously quoted for the benefit of those who believe all the examples given above; though I must confess, that if there be any such, my appeals promise to be of little avail, since their faith is settled by their birth, and as they cannot rely on their reason or their senses, it is difficult to conceive how they can be affected.

A glance at the heathen world shows us that we may look in vain for such monstrous articles of faith as we have pointed out in Christendom.

In India we find a blood-thirsty God, and accordingly thousands are annually sacrificed to please him. This is consistent at least; but nowhere out of Christendom do we find a 'just and merciful God' creating millions of beings who are destined, before their existence, to eternal damnation.

In both India and Siam we find 'incarnate Gods,' (Brama Sammonocedon) but in Christendom alone do 'the faithful' **** and *** their God.

Burckhardt tells us that the people living on the banks of the river Ur, in ancient Chaldea, believe that all the fish in the river belong to Father Abraham, and that they never die, nor can they be killed. One would think that by catching, killing, frying and eating one of them, their reason would be staggered; but no! it is not in the least awakened. The evidence of the senses cannot be brought in competition with faith, or 'the evidence of things not seen.'

After these things we cannot wonder that it should be the boast of Christians as it is of their Bible, that the poor and ignorant should be peculiarly rich in faith; and we can now understand why Christians and Infidels should both point in triumph to the philosophers and literati of Europe, for evidence that learning leads to unbelief; the former to show that where there is much wisdom there is little faith, the latter to prove that where there is little faith, there is much wisdom.

But folly is never consistent, and as 'faith is folly' we shall find it equally wanting in that virtue.

The same meek, humble followers of the 'lowly Jesus' and the 'poor fisherman,' exultingly point out as shining lights the 'faiths' of a Bacon, a Leibnitz and a Newton!*

It is the glory of each Christian sect to point out the *unreasonableness* of so much of another's faith as differs from its own. Reason will occasionally hold up her hand in presence of the largest faith.

The Catholic takes the liberty of establishing a purgatory, because it is unreasonable to suppose that a 'merciful and just' God would inflict infinite punishment for finite crimes. Lu-

* Even Newton was a rank heretic in his day—an Arian; and a large portion of his Theological work is suppressed even to this day, on account of the heresy, if not infidelity which it contains.—See *Jer Jones' Pref. to Apocrypha*.

therans and Calvinists disbelieve the Catholic doctrine of the Eucharist, because it is unreasonable and contrary to the evidence of their senses; but they believe in eternal punishments and laugh at purgatory. Catholics and many Protestant sects deny the Calvinistic doctrine of predestination, because their reason cannot reconcile it with the justice of God.

All support their own dogmas by direct testimony from that ever ready witness the Bible, and nearly all oppose the peculiar dogmas of others by reason. What cannot be proved, when faith and reason act in concert!

Some few Theologians pretend to reconcile all their dogmas with reason. The following extracts from Soame Jenyns' "Internal Evidences of Christianity" will show the absurdities to which men of talents and education are driven, so soon as they attempt to reconcile faith to reason.

——'No arguments founded on principles which we cannot comprehend can possibly disprove a proposition already proved on principles which we do not understand.'

* * * * *

'That *three beings* should be *one being* is a proposition which certainly contradicted it, that is, *our reason*, but it does not from this follow that it cannot be true; (!) for there are many propositions which contradict our reason, and yet are demonstrably true. (!!!) * * *——'the overruling grace of the Creator, and the freewill of his creatures, his certain foreknowledge of future events, and the uncertain contingency of these events, are, to our apprehensions, absolute contradiction to each other, and yet the truth of every one of these is demonstrable from Scripture, reason and experience.' (!!!)

He thus concludes one of his arguments; 'and therefore had this revelation been less incomprehensible, it would certainly have been more incredible.' This is as bad as the famous *argument* of Tertullian, '*credo quia impossibile est.*'

Such statements cannot be refuted, for as Mr. Bayle observes,——'as the highest degree of evidence (such as the evidence of sight) has the property, that it cannot be proved, the lowest degree of evidence (such as the evidence of things never seen) hath this destiny 'that it cannot be attacked.'

Some have gone so far as to say, that ears were given us in order that we might be told what to believe. 'Dieu nous a donne des oreilles pour avoir la foi, parce que la foi vient par oui dire.'

I shall conclude with an amusing account of the effects of faith, taken from M. de St. Evremond, an orthodox writer,

who says that he has 'a greater esteem for the faith of the most stupid peasant, than for all the lessons of Socrates.'

It is a dialogue between a converted nobleman and his father confessor.

'The devil take me if I believed a syllable then,' said Marechal d'Horquincourt; 'but ever since I could endure to be crucified for religion. Not that I see more reason in it now; but on the contrary less than ever; but for all that I could suffer to be crucified, without knowing why or wherefore.' 'So much the better my lord, replied the father, twanging it devoutly through the nose, 'so much the better; these are not human notions, they proceed from God. No reason! That is the true religion: no reason. What an extraordinary grace, my lord, has heaven bestowed upon you! *Estote sicut infantes*, be as little children; children have still their innocence, and why? Because they have no reason. *Beati pauperes spiritu*. Blessed are the poor in spirit, they sin not: the reason is because they have no reason. No reason; without knowing why or wherefore: Oh! excellent words! They ought to be written in golden letters. *Not that I see more reason in it now, but on the contrary less than ever*. In truth this is divine for them that have any taste of heavenly things: no reason. What an extraordinary grace has God, my Lord, bestowed upon you.' QU'EST-CE QUE LA FOI?

No. 3. On Prejudice.

"A Parisian* would be surprised to hear that the Hottentots cut out one of the *τασινκλες* of every little boy; and a Hottentot would be surprised to hear that the Parisians leave every little boy two."† Neither the Parisian nor the Hottentot is

* In the Investigator this word is printed *Parsians*, which, with many other typographical errors, shows that I could not have read it, else they would have been corrected. This is the first article in the indictment. I have here concealed the most objectionable word. A. K.

† Voltaire. *Essai sur les Mœurs*.‡

‡ In answer to my request, as expressed in the Investigator,—“Will the author of the first article be so kind as to furnish us with the reference to the volume and page, chapter or section to which he refers in his note?” I find the following in the (New York) Free Enquirer of January the 19th.

‘As our friend and correspondent Ben Krapac resides near Mobile, La., it will be impossible for him to furnish Abner Kneeland with the reference to Voltaire’s *Essai sur les Mœurs*; and this work being in eight volumes, it would require more time than we have at present to look for it. But the two following quotations from the same work, may perhaps assist him. The first occurs in chap. CXLI. the 20th paragraph, and reads thus:—

astonished at the practice of the other, because he finds it unreasonable, but because it differs from his own. The Frenchman will ask *why* the Hottentot allow their boys but one *τεστικὺς*,—but that same Frenchman, though he be too stupid to understand the laws of evidence, or too illiterate to apply them to history, firmly believes that Jesus Christ was begotten without any *τεστικὺς* at all.

It matters but little, for my present purpose, whether the opinions of the Parisian and Hottentot be true or false; but, let it be observed that each of the parties, holding opinions which to others seem monstrous, absurd and incredible, may, and generally does entertain them without having, or even desiring a single evidence of their propriety or truth. The children and the grand-children of these men will imbibe these same opinions, as they imbibe their mother's milk, with open mouth and closed eyes. Should these two men exchange babes, the little Frenchman would be half emasculated, and would think like a Hottentot, while the little Hottentot would become a good Catholic and "a proper man." All good Frenchmen and Hottentots are ready to maintain and defend their opinions, thus obtained, with the——the sword.

We are born to an inheritance of opinions, right and wrong, and right or wrong: we cling to them with a pertinacity exceeded by nothing but our attachment to life. The seeds of error, as well as of truth, are planted by the stupid parent in the minds of his unfortunate children, and lucky is the child in whose minds the tares do not choke the wheat, before he is able to distinguish one from the other.

These opinions, to which all men are born, as they are to misery, without a why or wherefore, constitute our PREJUDICES, and so long as they are full of error, our actions, which

' Si la circoncision a dû étonner les premiers philosophes qui voyagèrent en Egypte et à Colchos, l'opération des Hottentots dut étonner bien davantage; on coupe un testicule à tous les mâles, de temps immémorial, sans que ces peuples sachent pourquoi et comment cette coutume c'est introduite parmi eux. Quelques uns d'eux ont dit aux Hollandais que ce retranchement les rendait plus légers à la course; d'autres, que les herbes aromatiques dont on remplace le testicule coupé les rend plus vigoureux; il est certain qu'ils n'en peuvent rendre qu'une mauvaise raison; et c'est l'origine de bien des usages dans le reste de la terre.'

The other occurs in chap. CXLIII., second paragraph, and is as follows:—

' Quels objets pour des hommes qui réfléchissent de voir au-delà du fleuve Zayre, bordé d'une multitude innombrable de Nègres, les vastes côtes de la Cafferie, où les hommes sont de couleur d'olive, et où ils se coupent un testicule à l'honneur de la Divinité, tandis que les Ethiopiens et tant d'autres peuples de l'Afrique se contentent d'offrir une partie de leur prépuce!''

are guided by them, must be fraught with mischief. Every action founded on error, must do harm, and each unfounded prejudice will not fail to exhibit itself, sooner or later, in the sufferings of its possessor or some of his fellow-creatures.

Pure *virgin ignorance* is bad enough, although, if there could be such a state of mind, it would probably be harmless; but prejudice is of a more positive character. The prejudiced man is not only ignorant, but he believes a thousand errors to be truths, and on these he acts.

So universal is the reception of erroneous ideas, and so rare is it for even the intelligent to master their prejudices, that the discovery of our own ignorance has been sarcastically called 'the height of wisdom.'

One of the worst characters of prejudice is, that it cripples the judgment in all matters connected with its peculiar province; and what subjects are not connected to some extent?

A new idea is examined by a comparison with those already received. How then can a prejudiced man distinguish truth from error. His mind is the receptacle of all the absurdities which have been invented, and carefully transmitted through twenty generations; a puddle of nonsense, through which the brightest idea cannot be dragged without being soiled.

But if by long and hard study, a man has attained the 'height of wisdom,' and brought his mind to a state of pure ignorance, then no matter how small his intellect or brain; it may receive but little, but that little will be truth. When his mind has thus been cleansed it receives nothing but what he has tasted, smelled, felt, heard or seen, or ideas that are consistent with information so obtained.

I believe that many minds are so perverted by prejudices, that the shortest mode of correcting their opinions and judgment would be (if possible) to reduce them at once to the condition of a new-born babe; but such a change is certainly impossible, and in most cases probably unnecessary.

As a great number of our prejudices arise from the abuse of language, the substitution of one word for another, and, above all, the mistaking of words for things, I shall, before proceeding further, define the word prejudice.

"A *prejudice* is every opinion, whether true or false, not founded upon argument in the mind of the person who entertains it,"* and as I believe men have the power of distinguishing truth from error, so I believe that most men can distinguish

* Paley's Moral Philosophy, B. vi. c. 2.

their true from their false prejudices if they will take the trouble.

I do not ask them to empty their brains before examining an opinion, but I do ask them to examine it on its own merits, and not by comparison with a stock of prejudices which may be as full of error as of truth. It is easy to ascertain whether an idea be consistent with your old opinions and prejudices, and this is the way in which examinations are usually made ; but it often requires much study and reflection to find out if the same idea be consistent with what you *know* to be true, and this is the mode in which examinations ought to be made.

All KNOWLEDGE comes through the medium of the senses, so that if the idea to be examined (an old prejudice or a new presentation) be one of sight, let us ask ourselves if we ever received it through our eyes, or if it be consistent with ideas which we have so received, in others, if it be consistent with principles established by that sense. If it be an idea of taste or smell, let it be compared with the knowledge obtained through the organs appropriated to smelling and tasting. In general, the truth or falsehood of an opinion can only be discovered by means of the senses, or the knowledge obtained through them. Undoubtedly and unfortunately, such examinations may not lead to precise uniformity of opinion on all subjects. The man of little mind, whose senses, or cerebral organs are imperfect, cannot comprehend, much less apply, the general laws discovered and developed by men gifted with greater minds. But if there be truth in the testimony of the senses, if reason be any thing but a name, if men have the power of distinguishing the physical qualities of objects, (as size, weight, color, &c.): of conceiving two notions of locality, time, number, order, &c. in objects or phenomena ; and of recognising similitude, dissimilitude and identity, then can all intelligent men hold very similar, if not the same opinions, on all subjects.

At present, the *opinions* of nearly all men are determined by the time and place of their birth, the school in which they are taught, and the books which they happen to read. These circumstances must determine their *knowledge*, but their influence extends much farther, and settles a host of opinions without proof of their truth or falsehood, and these last opinions are our prejudices.

Having endeavored to point out the difference between the proper and only means of obtaining knowledge, and the usual means of obtaining prejudices, it may be well to illustrate the

influence of these mental operations on each other. For this purpose, let us inquire how a man unconscious of his prejudices, must judge of truth.

Suppose that an idea of sight be presented to him for acceptance or rejection, what does he compare it with? Undoubtedly with the ideas of sight already in his mind; but observe, that many of these ideas of sight were obtained through his *ears*! He heard of them from his parents, school master or parson. So long as his prejudices and his knowledge have equal authority, the strongest evidence that he *can* receive amounts to this, that the idea (of sight) in question agrees, not with something that he has seen, and which therefore exists in nature, and is a truth, but with something that he has *heard* of and which may or may not be true. Every idea which he receives is received without proper evidence; for whether it be true or not, it is equally credited provided it tally with his prejudices.

If the principles which I have imperfectly developed be correct, then the contradictions existing between the most intelligent men on the same subjects, are as unnecessary as they are pernicious.

Could a uniformity of opinion or community of truth be brought about, what oceans of misery would be spared to future generations! What talent, labor and wealth now wasted in the boundless, and worse than barren field of polemics, would be turned into fruitful sources of human happiness.

The sceptic * and the optimist may tell us that 'it is no more desirable to have a similarity of mind than of body and countenance.' Wretched quibble! Is it not desirable that all men should have health and strength of body? Is it not desirable to have universal beauty? Is it not desirable to get rid of knavery and folly, or to have universal mind and intelligence. Substitute *as* for '*no more*,' and the phrase will be true enough, but as it stands, I cannot imagine a sophism more loaded with absurdities. A uniformly excellent mind would in no way interfere with that difference of pursuits and occupations so necessary to supply the various wants of man; since all men might, in phrenological phrase, have heads, without an exact similarity of bumps; just as all might be handsome without having their faces cast in the same mould.

* By a *Sceptic* I mean one who doubts. Christians call those who do *not* doubt (the absurdity of) their religion, sceptics. Accordingly all "Infidels," whether Pantheists, Deists, or Atheists, are called sceptics. Truly language is malleable.

Those who think that disease and deformity (including ugliness) add to the total amount of human happiness, may consistently maintain that infirm minds are desirable elements of society. I cannot but think that the doctors alone are benefited by the former and the clergy in the latter. As the invention of steam-coaches would be a joyful occasion for horses by throwing them out of employment, the diffusion of knowledge and common sense will be a mournful event to the clergy for the same reason. God speed the day!

As a belief in the existence of prejudice is the first step towards its removal, I shall make a few remarks on the subject.

There is not a class of men on the face of the earth that is not allowed by the remainder to be prejudiced in some particulars. Lawyers, doctors, soldiers, merchants, mechanics, mendicants, Jews, Catholics, Protestants, Mahomedans, Methodists, Mormonites, each say the others have their peculiar prejudices. The obvious inference is, that each class has some false opinions. Should it be contended, that some opinions are entertained by all, and that he who confines himself to such generally received opinions, may be free from error: I would reply, that although he might have fewer false prejudices than any sectarian, still he must have some and perhaps many; for in no two ages has the same sect held the same doctrines, and in no two ages has the general or common stock of opinions been the same. The general currency of ideas has then always been alloyed with the baser metal of error. For the truth of these positions I appeal to history, without any fear of being disputed.

Who can say that he does not entertain any opinions which he has not thoroughly examined; that he is entirely free from prejudice? Certainly no modest or candid man. Let those who are in the habit of condemning the opinions of others as freely as they thrust forward their own dogmas, learn a lesson of charity, that virtue so much preached, so little practised.

When we consider the different circumstances in which men are placed, we cannot wonder that every division of mankind, whether literary, religious, political, or geographical should have its peculiar set of ideas. As a man's knowledge is not born with him, it must be derived from sources as variable as the circumstances in which he lives. But it is more difficult to conceive how prejudices, distinct from, or opposed to the interests of those who hold them, and which all have the means of examining, should be received unanimously by some classes of

men, and rejected with the same unanimity by [others. Such however is the case, and moreover men will sacrifice their very lives to establish some of their party prejudices, while a known truth is scarcely noticed by them. This last fact in the history of prejudice, which I derived from my studies of martyrology, seems to be a kind of mono-mania which I do not pretend to explain. *Martyr* (as commonly understood) and *maniac* I have always considered as synonymous terms.

I proceed to examine the origin and nature of *sectional prejudices*. The 'esprit de corps,' or clannish feeling, which man seems to possess in common with all gregarious animals, first induces a young professional to 'take up the cudgels' in defence of all the opinions which constitute, or rather which he conceives to constitute, a part of the special property of his profession. To this stock every knave and every fool adds a little; and here is a fertile source of prejudice; for the next generation receives these additions as a part and parcel of the established creed. The man that adopts these opinions—and few have the industry to discover and the independence to reject established errors—must, for consistency, defend them. He plies his ingenuity and rakes up every argument on one side, that his knowledge will afford, and as the constant repetition of a false story is said to convince its inventor of its truth—each repetition becoming a new evidence—so every combat in which the young bigot has occasion to defend his dogmas tend to convert hypocrisy to belief. He finds for instance, that some of the grossest abuses of law and justice, which have for years been exposed by the first philosophers and ablest lawyers, are supported with all the sincerity imaginable by the whole tribe of attorneys and counselors—by men of honesty and ability, though an ordinary man of *another* profession could at once see their absurdity. The prejudices of medical men have emptied hospitals (by filling graves) and multiplied widows and orphans 'ad infinitum.'

Opinions and rules of action are adopted by men that know not why; but how they are acted on we all know too well. This monstrous abortion of ignorance, prejudice, whether it exhibit itself in the form of distorted theory—affected humanity in receiving the follies of our ancestors—chivalric royalty—pseudo-patriotism—or all swallowing faith, has been far more injurious to our race, than all the plagues, pestilence and famine which have desolated the earth. It is continued from generation to generation, and like a great mill-stone bound round the neck of a deluded man, it must either snap the cords which bind it, or (more commonly) bring its miserable supporter to the ground.

Alas! man is not only born in ignorance, but the eyes, which nature has given him, are blinded by those who precede him, in order that he may continue in the dark.

No sooner is the little Turk brought into the world, than he prophet drops a curtain before his eyes beyond which he may not inquire:—the little Indian from the moment of his birth, is taught to fix his eyes on the car of Juggernaut, red with the blood of man, in order that he may see nothing else; and the blessed little Christian must crucify his reason on that cross in whose name thousands have been slaughtered and roasted, and on which God himself was nailed by his chosen people the Jews.

To rid ourselves of prejudice we must get knowledge of things, if we can, and, if not, of books.

The man who has no knowledge of the opinions of other sects and nations, *must*, in the present state of the world, be a prejudiced man. Hence we find that not only every individual, but every family, every city and every nation, has its particular rule of truth and scale of merit. When Mungo Park was in the interior of Africa, the black ladies supposed his mother had, during his childhood, dipped him in buttermilk every morning until he became white, and that his nose had been raised so much above the level of his face by continual pinching.

When the first Ambassador of the Sublime Porte arrived in Paris, he was, as a compliment, invited to witness the performance of an Eastern melodrama at the Theatre, and in which were represented many of his religious ceremonies—ceremonies that he thought none but good Mussulmen should be permitted to see. Without anticipating the nature of the performance he attended, but was so shocked at the blasphemy and sacrilege of the scene in which Mahomet was brought forward, that when he returned home he declared that the Christians, were devoid of all religious sentiment, and he wondered that 'Allah' had not struck the house down; forgetting that the followers of the Prophet were allowed to revile not only the 'Papist,' but the 'reformed religion,' with equal impunity. A man that has never travelled from his native town, looks with admiration on the rude architecture of the village church—with veneration on the prosing old ass that dogmatizes in it,—and with awe and respect on a vulgar, stupid justice of the peace. Quiescence and prejudice are nearly inseparable. Reader, ask yourself if there can be a handsomer building than *your* church, or a more holy or a wiser man than *your* parson?

As it respects the article on Tracts, it was a communication. I think it was fully called for by the tale (whether true or false) of which it is a review. I have received a letter from the author since, who lives out of the state, and in which he says he had no idea of writing any thing blasphemous, and presumes I had no such idea (which I am sure I had not) in publishing it: that he has shown it to many people since, and has not found even *one* who looks upon it as *blasphemous*, however much they may disapprove of the style in which it is written. As a part of this article is contained in the Investigator of January 3, I shall insert that part, also in this introduction, that the readers of the defence who are not subscribers to the Investigator, may have a chance to examine the whole article. The sentences in the indictment I have put in brackets.

TRACTS! TRACTS!! TRACTS!!!

MR. EDITOR.—The public are under great infinite obligations to the very pious, soul loving, soul saving gentlemen and ladies who furnish them gratuitously with Tracts every month, especially if they have the means of their conversion even at the eleventh or twelfth hour, as in the case of the one now before me, entitled 'David Baldwin, or The Miller's Son.' It so happens, that there are many hardened infidels on which these missiles fall harmless, notwithstanding they are thrown by those, who consider themselves adepts at hatching up a good story, and sometimes a good *lie*, as in the tract of 'Don't Unchain the Tiger,' where the writer makes Franklin to speak four years after he was dead. Perhaps the 'Witch of Endor' had come to life again in 1794.

I suspect that even the zealous and pious Rev. Mr. Strong, of Flatbush, N. Y. who I understand is the writer of this mighty narrative, will find some more stubborn infidels than David Baldwin, and who will serve up some of the *Strong* men's arguments to the public, in a different light to what he has done in his Tract.

The reverend gentleman may be strong in body, but I do not think his writings show a gigantic mind. Even with the aid of his pious brother physician, Dr. Vanderveer, they have not made out a very *strong* case. It is my opinion that Dr. Vanderveer will shine more as a Horticulturalist, or a land speculator than as a theologian with all his learning and abilities. Ten thousand dollars made in a few weeks by one speculation is not so '*gloomy*' as his reverend brother '*Strong*' represents this world, I would suspect so at least. Perhaps

if Parson Strong could make money as fast as the pious physician, he might think otherwise too. With these preliminary observations, I will now review some of the prominent parts of this mighty narrative. Let it be borne in mind that the writer pays a strong and marked testimony to the character, conduct and abilities of his hero, for an account of which see the first and second page of the tract.

The first thing that looks like an argument is the following: 'At one time whilst earnestly engaged upon the external evidences of divine révelation, he remarked with energy, that he would not believe the Bible to be the inspired word of God, even if there were external evidence sufficient to sustain it. Why not? I inquired. The matters contained in it, and recorded as facts, he replied, are so unreasonable, so inconsistent, so foolish, and so much at issue with all our ideas of truth and propriety, that no man unblinded by superstition or prejudice can possibly believe them. What are these facts? I asked. He fastened on the conversion of Saul, showing by his comments that he viewed it as the most extravagant of them all. I replied that it was a fact as well attested as any other fact in history, and although there was something unusual in the occurrence, there was certainly nothing unreasonable.'

As 'the Miller's Son' is not here to reply to the reverend gentleman's version of the interview I will ask him a few questions in his stead.

Can Mr. Strong produce any other testimony than the Bible to prove the conversion of Saul? If so how dare he say that it is as well attested as any other fact? Is it as well attested as the conversion of David Baldwin? Mr Strong likewise says there was nothing unreasonable in the occurrence; does he mean in the event itself, or in the manner of its accomplishment? The event itself was certainly not of common occurrence, and the relation which is given of it, is unreasonable and contradictory.

The Tract proceeds 'As you acknowledge God to be the Creator of the human soul, there can be nothing unreasonable in saying that he has power to renew or change that which he had power to form.' To which he replied, 'that such a conversion must be a miracle, and miracles were not susceptible of human proof.'

It appears to me from this conversation that the 'Miller's Son' could not have been a very decided Infidel, or he never would have admitted, 'God to be the creator of the human

soul,' because this is acknowledging the very points at issue between Infidels and Christians.

Infidels neither believe in such a God as Mr. Strong does, neither do they believe in a human soul such as he believes in, consequently to acknowledge that God creates human souls would be a gross absurdity. I therefore challenge Mr. Strong to produce proof as well attested for the conversion of Saul as of the subject of the tract.

At another time Mr. Strong proceeds to give a relation of a conversation at the mill, on a certain day when it was very boisterous weather, as follows, "When I arrived, I said to my young friend, with a serious air, I was thinking as I came along, what a gloomy world this is! It appears to me so full of difficulty and trouble, I had concluded that if your views were correct, it would be much better for us to administer to each other a portion of some fatal drug that would lay us asleep forever; it will only be a sleep, you say, and why not sleep at once, &c.?" When he recovered from the first emotions of surprise, he replied,—We must take the bitter with the sweet. But the sweet is of short duration, the bitter seems to constitute by far the largest portion of the cup, I continued. Seeing to what conclusion it must inevitably come, he adroitly returned the question, saying, Will you please tell me what sustains you? 'Hope, I immediately replied—the hope of blessedness to come sustains us, &c.' Now Mr. Strong admits that this is a gloomy, bitter, sorrowful world. Who made it so? Was it your infinitely good and kind God that made it so? Why did he not make it better when he was about it, and so render the services of such a multitude of lazy drones of priests unnecessary? Was it because he had not the power, or had he the power and wanted the will? If so, it appears to me he lacked wisdom, because, it is easier to keep a machine in order than it is to repair it after it gets out of order. How is it possible for perfection ever to become imperfect?

Among some common place remarks, I notice the following, 'Taking away the Bible would be lifting the flood-gates of vice. I know it, said he; the world is not yet sufficiently philosophical to endure the change.' This reply did not show a very profound wisdom in the Miller. Had he told parson Strong, that philosophy would supply the place of the Bible, without its superstitions and contradictions, but that it never would become general so long as there was one priest to oppose it, and that it is the interest of the clergy to prevent the spread of philosophers, is evident, for if they do not keep down

philosophy, philosophy will put them down forever; the priest and the philosopher cannot live together in harmony. But it is a false idea to suppose, that morality cannot exist without the Bible. Morality is as independent of the Bible, as philosophy is of Priestcraft.

‘I asked him (the Miller) if infidels ever prayed? He said he thought not. Are infidels then independent of their Maker? He replied, No! Is it not unreasonable, is it not contrary to the common sense of mankind, that dependent creatures should never thank that being on whom they always depend.’ It appears to me that the reverend gentleman has not shown great judgment in asking two such foolish questions. Does not Mr. Strong know, that infidels are so, because they do not believe in a Maker? How then can they acknowledge dependence on a being or thing, which they believe has no existence, or pray to that which cannot hear? If parson Strong thinks that Infidels are as stupid and inconsistent as Christians, he is mistaken; they never take up time in telling people what they already know, and if they did really believe in an ‘*All knowing God*,’ they would consider it an act of supererogation to pray to him when he already knew much better than they did, what they needed, and would be for their good. The prayers of Christians, however long or short, pertinent or otherwise, are summed up in these words, and which is the whole they need say, ‘Not our will, but thine be done,’ and if they would raze all their prayers down to this laconic sentence, they would save themselves and God *too*, a great deal of *precious time*, and save their consistency in the bargain, for if they were to pray from now till doomsday, (should there ever be one,) their whole prayer, and I think all will allow, that it will be a *tarnation* long one, will, notwithstanding, all be comprised in the above seven short words. I think parson Strong will have philosophy enough to perceive, that when all people have philosophy enough to use this short but concise prayer, and no more, that Othello’s occupation’s gone. I would advise Mr. Strong not to flatter himself that all infidels are as ignorant as his young friend, and that they would all make such admissions as he says David Baldwin made. That the thing made is not independent of its maker, I think is self evident, but the question comes up, is man made? Infidels say they do not believe it, how then can they be dependent on a Maker? It would be a palpable absurdity.

[I cannot pass over the subject of prayer, without adverting to the curious and strange predicament that God is placed in,

by listening to the unceasing and endless varying, and what is worse, contradictory petitions that are every moment ascending up, or down to him. I think the *ὁδὸς γενόμενος* is more a subject of pity than General Jackson was during his late visit, his bowing and shaking was very arduous, but it was all one way, congratulatory and pleasing, and he had some occasional respite; but only think of God having no respite whatever, day or night.] Only think of it Mr. Strong, here you are yourself, teasing God regularly seven times a day at least, if you are a real Simon Pure; I take it for granted that you pray when you get out of bed, alone; then with your family, again at every meal once or twice, and again family prayer in the evening, and again by yourself on retiring to bed. And if every professor of religion in the United States, prays as often, which he ought to do, what a heterogenous mass of contrariety he has to hear and answer every day, for a few millions. But this is not all. Look at the occasional prayers of the Clergy and others, at marriages, christenings, sick beds, funerals, &c. &c. and even on the occasion which elicited this famous tract.

But when we add Public Prayer to the catalogue who can measure its length? Only think of the prayers that are offered up every Lord's day in this country, besides those on other occasions, such as weekly prayer meetings, social do., anxious do., inquiry do., missionary do., four days and protracted do., &c. &c. &c. and what kind of an ear and memory can you conceive God must have? But this is not all; think of their contradictory character; one is asking for one thing, another for another; one for rain, another for dry weather; one for an east wind, another for a west wind; one sect is for predestination, another for free will; one for sprinkling, another for immersion; one for a Trinity, another for a Unity; one for the salvation of the elect, another for the salvation of all men, &c. &c.

Now, can any one conceive, how all these prayers can be either heard or answered by one person? And this difficulty is greatly enhanced from the consideration that these prayers are not all to be answered immediately; many of them are offered prospectively to be answered, like prophecy, at some future time.

[It therefore appears to me, that God must have an ear very different from any thing I can conceive of, to hear so many contradictory prayers all at once; and I am equally at a loss to imagine how he could recollect them all, and at what time they are apt to be answered.]

Perhaps he keeps a set of books, and clerks, to enter all the prayers in ; but another difficulty presents itself. How could he inform all these clerks at one time what to enter? Besides, when would he find time to examine those books, so as to answer all the petitions at the proper time?]

I have thus far confined my remarks on prayers to this country, which contains only about thirteen millions ; but how are my wonder and difficulties increased, when I extend my views to the eight hundred millions on this globe, a large portion of whom are continually offering up prayers of some kind or other to this Great Being. I now in sober reality ask, what conception can any one form of a being capable of either hearing, remembering, and answering, such an innumerable mass of contradictory petitions, continually pouring in from all quarters? Only think of it seriously for one minute, *Mr. Strong*, and then say whether you think it possible that there is such a 'prayer hearing, and prayer answering God,' as I have portrayed? Superstition may answer in the affirmative ; Philosophy will answer in the negative.

The next thing entitled to notice in this famous Tract is, the admission of Parson Strong, that, Baldwin, whilst he retained his health and his faculties, 'remained inflexibly firm' in his infidel opinions. But when the fell destroyer of both body and mind, consumption, had laid him prostrate, then Mr. Strong succeeded in working on his enfeebled intellect, and *gained the mighty victory*, so lavishly proclaimed through the instrumentality of that mighty vender of wonderful conversions and other pious gossipings, the 'American Tract Society,' whose *small* publications are all pure '*gospel*,' if the *pious* narrators are to be believed.

In the first interview the Parson had with Baldwin after he was confined to his bed, is the following conversation.

'I affectionately enquired how he was. Said he, "I am fast sinking ; it is impossible that I should recover ; but I am resigned to my fate, or to the disposal of the great God of nature." I observed that resignation was good under such circumstances, if it were well founded ; but in order to have any thing valuable in it, it must rest upon some sure foundation. A resignation founded upon the word of God, the hopes and promises of the gospel, must surely be good for a dying man ; but if you cast away the bible, your resignation rests upon nothing but your own carnal reasonings or vain imaginations. "Every man has his opinion," said he ; "the Mahommedan has his opinion, the Jew has his, you have

yours, and I have mine." That may be, I replied, but still it does not make all our opinions equally wise or safe. As these opinions are contrary to each other, some of them must be wrong; and now if yours are right, David, all the rest of us are just as safe as you are; but if yours are wrong, O! how awful the thought! What a mighty difference death must make between you and us! "Hush!" "hush!" he exclaimed with vehemence, averting his face to the opposite side of the room, his whole system at the same time becoming greatly agitated. His anxious mother, agonizing for the salvation of her son, cried David! David! why will you do so? Turning again, replied to his mother, "What else can I say? I am too weak to listen to such things now."

What evidence can Mr. Strong produce, that opinion alone, will make 'a mighty difference' between him and Baldwin at death? The Bible says that 'the soul that sinneth it shall die.' Will Mr Strong pretend, that *he*, notwithstanding he considers himself a chosen vessel, has never sinned? And if so, will *he* not die according to that declaration? Where then will be the 'mighty difference between us,' (him and Baldwin) at death?

Again he says, 'Waiting until his feelings had in some measure subsided, I said, David, this is not weakness, it is conscience; I have often seen Christians much weaker than you are, converse for a whole hour upon the promises and the hopes of the Gospel; I have seen them contemplate with delight the glory hereafter to be revealed; but you seem to be easily disturbed; you appear to have but little confidence in your own system: it does not bring you any comfort in the prospect of death, "Trouble me no more," said he; "you could not convince me when I was well, it is in vain to think of doing it now I am sick; do not come here to disturb a dying man; let me die in peace." I told him I had not come to argue, I had come to preach Christ and him crucified, the only way of life, the only hope of a resurrection from the dead and eternal blessedness beyond the grave. I have not come because I am desirous of giving you pain; I came to seek your eternal good. I have never felt any thing but kindness toward you: in all our arguments you never saw me manifest any other feeling. "That is so," said he, "I never did." And now, David, with regard to your dying in peace, that cannot be. For you to die in peace as you now are, is utterly impossible. There can be no peace, saith my God to the wicked. "You ought to have charity," said he with

emotion ; "it is a poor religion that does not produce charity." I would most gladly have charity for you if I could, I replied ; but I cannot have it ; my Bible will not permit me to have it ; my Bible declares, he that believeth shall be saved, he that believeth not shall be damned. "That is hard," said he. I continued my discourse, saying to him, I would take great pleasure in administering comfort, if it were in my power so to do ; but I know of no way in which a minister of Christ can comfort a dying man but by presenting the consolations of the Gospel. These, David, you have cast away—you have cast away the Savior, and trampled the blood of the covenant beneath your feet. How can I comfort you? Strong as is my desire to do so, you place it entirely beyond my power to offer you one drop of consolation. "I hope then," said he, "you will not distress me." Perceiving his feelings much agitated, I desisted. After pausing until he was somewhat composed again, I said David, shall I pray with you? He hesitated for a moment, and then answered, "No. The great God of nature cannot be changed by man's prayers. He is immutable." Nevertheless, said I, he has declared himself to be the hearer of prayer and the rewarder of those who diligently seek him. He has said they that seek shall find—they that ask shall receive—and unto them that knock it shall be opened. "You may think so," said he, "but I think otherwise." After another considerable pause, in which not a word was spoken by any person in the room nor any thing heard but the sighs occasioned by a mother's and sister's anguish, I said to him, David, I must now take my leave of you. But shall I ever come to see you again? He looked earnestly in my face, and with an expression of kindness, he slowly said, "If you will come and see me as a friend." Then you do not wish to see me as a minister of the Gospel? He answered distinctly, "No." But seeing I sustain that office, I replied, I cannot reconcile it with my sense of duty to visit a dying man without presenting the only hope God hath provided for the dying. If I come to see you, I must preach Christ and him crucified. So saying, with painful emotions I bade him adieu.

In the foregoing extract, we perceive the audacity of Mr. Strong, and of clergymen generally, in judging of other people's condition and feelings. What right had he to tell Baldwin that it was not weakness but conscience?

I ask, where are the comforts of the gospel, if it reveals an eternal hell for a large portion of mankind? Why do not

Clergymen desist from troubling and disturbing dying persons, when requested, as in this case? What can they do to benefit persons in sickness more than any one else? Has God or Christ authorized them to intercede for any body? Can they by their improper interference alter God's decrees by making a non-elect sinner reconciled to God? Will their intercessions alter God's purposes? If it cannot, what is the use of either?

Mr. Strong spoke one truth, when he told him 'with regard to your dying in peace that cannot be.' Why? Because he was determined to disturb him as long as he lived, and he kept his word. It is certainly very glorious news—glad tidings to a dying man, to be told, 'that he that believeth not (what Mr. S. believes) shall be damned.' A very fine sleeping potion for a sick man truly—fine 'comfort' and 'consolation,' to be told when wishing to sleep, that you will be damned to all eternity, if you shut your eyes. Mr. S. acknowledges that he cannot visit the dying man as a friend, notwithstanding the testimony he gave to his good character. Oh no! if he visits him at all it must be to plague and tease him, and make him as miserable as he can the few days he had to live. Physicians of the body generally try to make their patients as comfortable as possible, when they know they must die, but, the physicians of souls—soul savers, seem to take delight in making their spiritual patients as uncomfortable as they can.

Are they instructed to do so by the head physician? He seems to take delight in the misery of mankind, what else can we expect of his servants? Like master like man. Even the infatuated mother, through the instrumentality of her spiritual adviser no doubt joined in the plot to keep him miserable, by making Mr. Strong pray in an adjoining room, and opening the door on purpose, so that the already lacerated feelings of the dying man might get an additional blistering plaster from this amiable—this kind hearted visitor. Is it fair to presume, that he did not pray in a whisper? No doubt he raised his voice as if God was at a distance, or asleep. It would seem, however, from the sequel, that the Old Gentleman was at home, as that or subsequent prayers, were heard and answered in the conversion of this infidel, so says the narrator.

Subsequent to this prayer, it is related that Baldwin became very restless, and as he expressed himself was, in 'awful distress and agony of soul,' and when asked if it was occasioned by the conversation this morning? "O, yes," said he; I once

thought that I could die in peace, but now I find I cannot." Is this to be wondered at that a person worn down with disease, should be disturbed in mind, when the parson, his mother, father, and sister all teasing him to become a christian.

Much of the common place remarks on such occasions I pass unnoticed as they would occupy too much of your time, being mere repetitions of scripture. The next thing worthy of notice is, what Mr. Strong says Baldwin said about the principles of infidelity, viz. 'He seemed now to regard the principles of infidelity with the deepest abhorrence, and to look with wonder and gratitude at the fearful gulf from which he had escaped.' What certainty after all, had Baldwin or parson Strong, that he had escaped the fearful gulf? It appears to me that they assumed a position bordering on presumption, totally unbecoming the humility of Christians.

But how happens it that his former principles should now be so abhorrent to him, when they had no effect to corrupt his morals? I wish it to be kept in view that the narrator says, that "he was kind and condescending in his feelings, sober, quiet and industrious in his habits." Now, what is there so very abhorrent in such traits as those? Can parson Strong say as much of all his church members as this? I suspect not. Our tract writers overshoot the mark, by saying too much, their conversions are too sudden; scales falling from the eyes of an infidel, who the narrator admits, 'had powers of mind of the first order, appears to me rather too sudden to be effected in a few hours, especially too when his weakness of body is taken into the account, for it cannot be supposed that he could read the Bible so as to examine the evidences of Christianity. It must have been like most of the conversions to Methodism, done instantly, like a flash of lightning as is the case at camp meetings, &c.

There appears to me to be either a contradiction towards the conclusion of the tract, when compared with the commencement of it, or else it is proof to my mind, that Baldwin's intellect was impaired; for in a conversation which is said to have taken place between him and a neighbor he had sent for, who was likewise an infidel, he told him "that the philosophy we have been cherishing could not sustain the soul; it could not stand the test of death. I have had to abandon it, and if ever you die happy, you must abandon it also."

I should infer from the above remarks, that if he ever possessed 'powers of mind of the first order,' that they had be-

come paralysed, or else that he had never understood in what philosophy consisted. What has philosophy to do with the soul, or happiness at or after death. Philosophy has to do with things—with knowledge, not with speculative opinions or immaterialities? These are subjects for theologians and controversialists, not for common sense philosophers. What did the (presumed) converted infidel know about a soul, any more than he did before? His exacting a promise from his mother to “burn all his infidel books,” showed great weakness, whilst there are so many printing presses in existence, the time has gone by for suppressing information by fire and faggot. Had his been the only copies in existence, it would have answered his intentions.

Parson Strong goes on to say that he ‘greatly delighted in the Psalms of David, saying at the same time that all the rest of the Bible was good.’ Did he, could he really be delighted with the 109th Psalm? Was it good in David to commit adultery with Uriah’s wife, and then murder him, &c. &c.

In concluding the tract the narrator observes, ‘But take away the Lord Jesus Christ, the only name given under heaven whereby we can be saved, and what is left to bear up the soul?’ I answer in the language of the tract; *if*, ‘the habits of his life were irreproachable’ what had *he* to fear? Is God so unjust as to punish his creatures for no crime?

What became of all the human race that existed before Jesus was born, and of all who have existed since, without hearing of him or his name? *Are they all lost?*

Had ‘our young (infidel, but now converted) friend’ no ‘peace until he found it in the Lord Jesus Christ?’ How does that agree with his expression “I am resigned to the disposal of the great God of nature?” Does resignation argue the want of peace? It appears to me that there are a great many inconsistencies in this tract which are irreconcilable with plain common sense, but which may be plain enough to those who see every thing right when they view them through the spectacles of faith; they are a convenient medium through which to examine mysterious objects. But I must leave the tract, and in conclusion, notice the letter of the physician who attended Baldwin, which is on the cover. Dr. Vanderveer pays the same compliment to his character and intelligence that Parson Strong does. I am rather astonished that a man of such reputation as a physician, should lend his aid in the dissemination of such weak, paltry stuff as this tract contains, especially when it is known that he has no need to act the

jackall for the sake of a living. His practice is fair, and his means ample. A man that can make ten or twelve thousand dollars in a few days by speculating on a few acres of land, has no occasion to act the hypocrite in order to get a living. But as the doctor has seen fit to volunteer his opinion on this knotty subject, he must not complain at having them examined without the aid of the spectacles of faith. After giving a brief sketch of Baldwin's character, sentiments, &c. he writes thus,

'But his subsequent history showed how weak is human reason unenlightened by the Spirit of God; and that, though in health infidel philosophy may gratify pride, when disease, with the prospect of speedy dissolution attacks the frame, it is unsatisfying and baseless.'

I would here ask the doctor, if infidel philosophy has a tendency to gratify pride, how it happens that his infidel patient had none? For he has acknowledged that Baldwin 'in his deportment was naturally retiring, and seldom expressed his opinions, except to those with whom he was in the habits of intimacy. His amiable character gained him the respect of all who knew him; and with those whose sentiments accorded with his own, he became a particular favorite.'

Are not pride, and an amiable character, and retiring deportment at variance with each other, and therefore inconsistent when found in the same person? Why did the spirit of God not interfere and stop this champion of infidelity in his mad career, when he was well and doing all the mischief he could in polluting all the people in his neighborhood? Would not that have been a more proper time to prevent the spread of those horrible doctrines, than to wait until he was incapable of doing any more harm, and then convincing him of errors by converting him? God does not seem to approve of the common adage, that prevention is better than cure.

As the principal part of the doctor's letter is much the same as the parson's, it is unnecessary to consume time with it, excepting on that point which refers to the state of his disease. The doctor admits that he had for some time labored under a scrofulous affection, which brought on a confirmed pulmonary consumption. Now is it not notorious that persons afflicted in this state are very weak and imbecile?

In order to illustrate what I mean more fully, I do it hypothetically. I will suppose that Baldwin had been all his life a good pious christian, and owned property to the amount of one hundred thousand dollars, and that soon after the commence-

ment of his complaint he made a will, and bequeathed all his property to the American Tract Society, Parson Strong and Dr. Vanderveer.

I will further suppose that Baldwin's infidel neighbor that he sent for, had prevailed on him to make a new will, and bequeath all his property to building a College on the same principles that Girard left his property. Would Parson Strong, Dr. Vanderveer, and the managers of the Tract Society feel satisfied, and let the property go according to the last will? I think they would not, and that they would have instituted a suit to recover the property on the legal ground of imbecility, and would have tried to prove, that at the time he made the last will, he was not of sound mind and memory, and I think they would have gained the suit, because the decisions in our courts in cases of this kind are against Wills made under such circumstances. Now, then, reasoning analogically, if Baldwin's mind was so enfeebled that he was not capable of judging how to appropriate his earthly substance, was he any more competent to judge of his spiritual concerns, and of abstract questions in theology, which require all the wisdom, judgment, and ingenuity of the giants in that study to solve. I am, therefore, of opinion that the conversion,—change of opinion I would rather call it,—was the work of Parson Strong and the other bigots who beset Baldwin in his weak and imbecile state, and that the spirit of the Lord had no hand in the transaction. The actors in the scene were more tangible objects than immaterial nothings, they were flesh and blood, who had a particular object in view, and no doubt are full in the belief that they accomplished, and are congratulating themselves that they were the honored instruments under God in plucking a brand from eternal burning. I have no objection to their enjoying the delusion, if they will only refrain from making such inferences and drawing such conclusions respecting the future state of infidels, when they admit that they are as good practically, nay better, than the professors of Christianity generally are.

Yours, &c.

A SKEPTIC.

Wherein does the blasphemy of the above consist? I am certain that no such thing was intended.

Now comes my letter to Mr. Whittemore, the editor of the 'Trumpet,' and the only thing of mine of which there is any complaint set up in the indictment. The letter speaks for itself. I contend that there is nothing blasphemous in it, even according to the strict letter of the law.

It does not deny the existence of God, much less does it either revile or curse him. It does not deny the existence of Jesus Christ; or the authenticity of the holy scriptures. It says nothing about the holy ghost, or any other ghost; and does not even deny the existence of witches or of the crime of witchcraft. I have only expressed my unbelief in some of those things in very plain and unequivocal language; but I am ready to believe in any one, or all of them, whenever the truth of them can be proved to my understanding.

Observe: I do not say, I do not believe in God, or in the Gods; for it will be seen by my philosophical creed that I do believe in God. But that the "Universalists believe in a god which I do not." So I believe in a god which they and all other christians do not. If I am an Atheist, therefore, for not believing in their God, they are Atheists for not believing in my God. With this explanation I insert the letter.

TO THE EDITOR OF THE TRUMPET.

Dear Sir: You observed to me the other day, that people still considered me a Universalist, and said to me 'If you will acknowledge that you are not, I will publish it.' I told you, in substance, that in some respects I am still a Universalist; but that in others I am not. I shall now answer you more at large, which I hope you will publish in full, and thereby redeem your pledge.

I still hold to universal philanthropy, universal benevolence, and universal charity. In these respects I am still a Universalist. Neither do I believe in punishment after death; so in this also I agree with the Universalists. But as it respects all other of their religious notions in relation to another world, or a supposed other state of conscious existence, I do not believe in any of them; so that in this respect I am no more a universalist than I am an orthodox christian. As for instance,

1. Universalists believe in a god which I do not; but believe that their god, with all his moral attributes, (aside from nature itself,) is nothing more than a chimera of the own imagination.

2. Universalists believe in Christ, which I do not; but believe that the whole story concerning him is as much a fable and a fiction, as that of the god Prometheus, the tragedy of whose death is said to have been acted on the stage in the theatre at Athens, 500 years before the christian era.

3. Universalists believe in miracles, which I do not; but

believe that every pretension to them can either be accounted for on natural principles or else is to be attributed to mere trick and imposture.

4. Universalists believe in the resurrection of the dead, in immortality and eternal life, which I do not ; but believe that all life is mortal, that death is an eternal extinction of life to the individual who possesses it, and that no individual life is, ever was, or ever will be eternal.

Hence, as Universalists no longer wish to consider me as being of their faith, and I no longer wish to be considered as belonging to their order, as it relates to a belief in things unseen, I hope the above four articles will be sufficient to distinguish me from them and them from me. I profess to believe in all realities of which I can form any rational conception, while they believe in what I believe to be mere ideal nothings to which they give both 'a location and a name.'

In giving the above a place in the 'Trumpet,' you will let me tell your readers, in my own language, what I do, as well as what I do not, believe, and thereby oblige your once brother of the same faith with yourself, and still your personal friend,

ABNER KNEELAND.

P. S. Dear Sir, If you are willing to let your readers know more fully what I do believe, please to publish also in your paper my Philosophical Creed, a copy of which, lest you should not have otherwise noticed it, I herewith send you for the purpose.

A. K.

In addition to all the above, I shall now insert my philosophical creed, which I requested Mr. Whittemore to publish ; but it seems he did not dare to do it : and although I expect to have, and know that I shall have, a most learned, a most labored, and a most elaborate defence,* yet I should feel perfectly safe with any candid and considerate jury, after reading the whole of my offence, with the whole of my sentiments and explanation, without any other defence at all. The defence, therefore, is for the benefit of the public, rather than myself. I know there is a breach made in the wall of the strong hold of bigotry, superstition and intolerance ; the whole foundation of priestcraft shakes even to the very centre ; and if it is, or should ever become necessary that I should be flung into that breach to make a bridge for others to march over my back, for the sake of storming that citadel, I cheerfully offer myself as the victim, and shall never shrink from that arduous duty while I have life.

* This was written before the first trial.

A PHILOSOPHICAL CREED.

I believe in the existence of a universe of suns and planets, among which there is one sun belonging to our planetary system; and that other suns, being more remote, are called stars; but that they are indeed suns to other planetary systems. I believe that the whole universe is NATURE, and that the word NATURE embraces the whole universe, and that God and Nature, so far as we can attach any rational idea to either, are perfectly synonymous terms. Hence I am not an Atheist, but a Pantheist; that is, instead of believing there is no God, I believe that in the abstract, all is God; and that all power that is, is in God, and that there is no power except that which proceeds from God. I believe that there can be no will or intelligence where there is no sense; and no sense where there are no organs of sense; and hence sense, will, and intelligence, is the effect, and not the cause, of organization. I believe in all that logically results from these premises, whether good, bad, or indifferent. Hence, I believe, that God is all in all; and that it is in God we live, move, and have our being; and that the whole duty of man consists in living as long as he can, and in promoting as much happiness as he can while he lives.

Written at Hebron, N. H., May 28, 1833,

BY ABNER KNEELAND.

What more need I, what more can I say? With my heartfelt gratitude to my brethren, who, with an ardor worthy of the best of causes, with an ardor worthy of *saints*, were they christians, have come forward so nobly in my defence, and in the defence of Free Enquiry, I close this introduction to the trial of

ABNER KNEELAND.

NOTE. Lest the motive of inserting these offensive articles in this introduction, and particularly the most offensive parts of them, should be misunderstood, I here distinctly state that it is because I considered it necessary for the information of the public, who will wish to know, and have a right to know, for what I was indicted; which they cannot know fully unless they see the whole of the articles of which those offensive paragraphs are a part; but I do it with a decided disapprobation of the style and language, so far as they are a violation of the rules of strict propriety in a justifiable controversy. How far

they are so, every reader should be left to be his own judge. Every purchaser of the trial can cut out those offensive parts, if he thinks it expedient, or seal over them a clean piece of white paper, and write thereon, "Let no one uncover what is here concealed," or whatever else he pleases. My motives in all this are to do good and not harm ; and I have not the least doubt but that they will be duly appreciated by thousands, not to say millions of my fellow citizens, whatever may be the result of this trial.

A. K.

When the foregoing was written, it was intended to have published the whole trial. But since Judge Thacher has published, or consented to the publication of his charge to the jury—which I consider an appeal to the public—I shall now only publish Mr. Dunlap's speech, or plea, in my defence. The matter therefore is now wholly before the public, and I am fully prepared for the issue, whatever it may be.

Thus much I had written in great haste to accompany the articles on which the indictment is founded, and it was intended to publish the whole as an introduction to the trial, which we then purposed to publish in full—believing at the same time that I should have been acquitted ; but after the trial, and as the matter was still pending before the supreme court, the propriety of publishing the trial was some doubted, although a considerable of this introduction was in type ; nor was this matter fully settled till the Hon. Judge came out, as we conceived, and laid his instructions to the Jury before the public. We then determined not to publish the whole trial ; but only the defence ; and let our enemies publish the plea of the government's counsel if they wish it. This having been determined upon, and the friends having resigned the work into the hands

of Mr. J. Q. Adams and myself, we shall proceed with it with all possible despatch.

It must be congratulating to every Free Enquirer, to see the effect which this prosecution has had thus far ; and the longer the public mind is agitated with it, the worse it will be for priestcraft, and the better it will be for the cause of free enquiry.

Simultaneous with this prosecution, a plan was laid to turn us out of Julien Hall, and break up, if possible, my Society. For this purpose the whole building was taken by Mr. Allen, the auctioneer, for the pious purpose of turning us out, as it were, neck and heels, as soon as our present lease should expire. It was soon ascertained that no terms could be made with him whatever, and therefore we began to cast about for a new place. We have succeeded to our hearts' content. If all the stars (or gods) in the whole universe had been combined in our favor, we do not see what more they could have done for us for the time being. We have obtained the Boston Theatre, in Federal street, which will hold at least three times as many people as Julien Hall ; but which is now as much crowded as that was. Here we shall unite instruction, edification and amusement, which are best calculated as we conceive, to reform the world.

The Assemblies commenced there on Wednesday evening, March the 5th, when we had the pleasure of seeing two hundred and forty ladies and gentlemen dancing at the same time, and the Managers had to turn away from 100 to 150 who could not be admitted. If our adversaries had anticipated all this, would they, think ye, have commenced this prosecution ? Add to this, the country is as it were awakened from their slumber to a sense of their danger. Public meetings have been held on the subject ; spirited resolutions have been passed ; and contributions, both public and private, have been forwarded to help defray the expense of this defence. We consider it a

common cause, no less than the cause of the whole country. It is the church and state party in politics, versus the people. And should the people fall now, when will their prospect be so good again?

We make this solemn appeal therefore to the public, not only to defend this case to the utmost, but not to let the matter die here ; but still to agitate the question, till every law, and every article in every state constitution shall be completely abolished that is incompatible with the constitution of the United States. Leave religion to stand or fall upon its own foundation. If the kingdom of Christ is not of this world (as most assuredly it was not, and never ought to be) what have the governments of this world to do with it, or that to do with the government? This holy (or rather unholy) alliance should be completely dissolved, and nothing heard of religion, or any thing that appertains to it, on the floor of Congress, in our Halls of Legislation, in our colleges or schools, (excepting theological) on board any of our naval ships, or in any of our armies. These all relate to the government and concerns of this world, which should have no connection with religious dogmas, religious rites or religious ceremonies. But confine these all to the sanctuary, to the church, and to religious associations. And let the laws take cognizance of their acts so far as to keep them as much as possible from quarrelling among themselves, and as relates to their civil matters only. Tolerate no religion exclusively ; for this supposes that some one among them all, is right ; and that the others may be tolerated ; but give equal protection to all sects, opinions and denominations, and exclusive privileges to none. And let the world see that both government and morals may get along just as well without religion as with ; and then you will let every body have his own religion at his own expense.

But when every body sees that he has got to support his own religion or have none, that he can no longer frighten other

people into a belief of his own dogmas, so as to make them help support his own priest, and then religion will soon go out of fashion. And when it shall no longer be in fashion, it can no longer be blasphemed against; and the clergy will all find that they must either hang up their fiddles or play some other tune; for they have played at the tune of hell-fire and damnation long enough. They have made most people monstrously profane; and they will continue so, more or less, till all such language goes out of fashion. At all events, I think that next time they will look before they leap, when they undertake to prosecute

ABNER KNEELAND.

Boston, March 6, 1834.

. NAMES OF THE JURORS.

EDWARD HOLBROOK,

ABEL BABCOCK,

JAMES BROWN,

JACOB DENTON,

WM. DYER,

PHILIP ELIOT,

LUTHER FELTON,

REUBEN FROST,

NATH'L. HAMMOND,

JONATHAN HOLBROOK,

THOMAS HOLLAND,

WM. HOLMES.

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A
S P E E C H

DELIVERED BEFORE THE
MUNICIPAL COURT
OF THE
CITY OF BOSTON,

IN DEFENCE OF
ABNER KNEELAND,

ON AN
INDICTMENT FOR BLASPHEMY.

JANUARY TERM, 1834.

BY ANDREW DUNLAP.

BOSTON:
PRINTED FOR THE PUBLISHER.

1834.

Entered according to act of Congress, in the year 1834,
By ANNER KNEELAND,
in the Clerk's Office of the District Court of Massachusetts.

THE MASSACHUSETTS ACT AGAINST BLASPHEMY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That if any person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing, or reproaching Jesus Christ, or the Holy Ghost, or by cursing, or contumeliously reproaching the Holy Word of God, that is, the canonical scriptures, contained in the books of the Old and New Testaments, or by exposing them, or any part of them, to contempt and ridicule ; which books are as follows : Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, the Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelation ; every person so offending shall be punished by imprisonment not exceeding twelve months, by sitting in the pillory, by whipping, or by sitting on the gallows, with a rope about the neck, or binding to the good behavior, at the discretion of the Suprême Judicial Court before whom the conviction may be, according to the aggravation of the offence. [July 3, 1782.]

SPEECH.

May it please your Honor and you gentlemen of the Jury.

After an opening of considerable length, and containing principles of an extraordinary nature in this land of civil and religious liberty, we have at length arrived at the threshold of the defence of the prisoner. I had thought till now, that our Constitution, laws, and practice in criminal causes, so far protected a party arraigned for an offence, as to require that some evidence should be produced to support the charges against him, before an argument to convict, could be addressed to the jury, by whom he is to be tried, not according to public prejudice, or excitement; but as your oath declares your duty, according to the evidence. I had thought, it was the duty of the Government, to confine the opening of the cause to a simple statement of the nature of the prosecution, of the points of law which would be urged, and the evidence, which would be adduced in its support. I supposed that the guilt of the prisoner should be proved, and not assumed, and that the whole evidence, on which the proof of that guilt rested, should be laid before the court and the jury, before any attempt could be rightfully made, to excite their feelings or influence public opinion against him. I have read indeed of one tribunal, where the rule was to punish first, and hear afterwards. It was the court which was supposed by the great poet of the classic age of Rome, to sit in the infernal regions, and its principle of judgment, "castigatque, auditque," was well suited, to the tribunal, and the place where it was established. But a different rule prevails in our courts of justice, where it is the fortune, or the fate of the prisoner to be tried. Here the accused is presumed to be innocent, until he shall be proved to be guilty. I know it is the practice of the English courts, where the defendant in most criminal causes of a high degree, is not allowed the privilege of counsel, for the King's counsel particularly in political causes, to commence the trial, with an argument against the

accused, as though the charges in the indictment were substantiated, before the production of the evidence. But this practice, which gives too great an advantage on the side of the prosecution, has not been adopted in the conducting of criminal causes in the courts of this country. Yet if this practice is to be introduced in this country, this cause surely is the fitting occasion for its introduction. In this cause we hear proclaimed the high toned and dangerous doctrines of the British government, in relation to civil and religious liberty, and we are as a matter of course, to expect the introduction of the practices of the British courts, by which those arbitrary doctrines, flowing from the corrupt union of church and state, are sustained in those courts. But I will not further complain of the course pursued in the opening of this prosecution, relying as I do upon the patience, candor and justice, with which the defence in this highly important cause, will be heard by the court and the jury, even if that defence should detain us here, till our heads shall be grown as grey as that of the defendant, who now stands arraigned before a criminal tribunal, for the first time in his life, and with full and uncontradicted evidence of his irreproachable moral character, given in his behalf by witnesses, who are adverse to him in religious opinions, and whose standing as moral and religious men, is of the highest character in our community.

I could have wished that the duty of conducting this defence, important to the prisoner, and to every citizen of this republic, had not devolved upon me. I was fully aware of the great labor it must require, of the force of the feeling which the defendant has to encounter in this community, distinguished for its attachment to religion, and of the prejudice which ignorance or bigotry might rouse even against the counsel, appearing merely in the way of his profession, in the defence of this prosecution. But when my professional services were required by the defendant, I thought it would be an affectation of being above my profession, or a dereliction of professional independence, responsibility, and duty, should I decline his call to defend him. The Constitution, of our renowned Commonwealth, secures to a person accused of an offence, in all cases the right to "be fully heard by himself, or his counsel at his election" and as the Court and the Jury have no right to prejudge him, or withhold from him his constitutional privileges, so neither had I, when called upon to act as his counsel. In the celebrated case of *Carlile*, reported in *Barnewall and Alderson's Reports*, he was indicted, for an attack upon the

christian religion, far more offensive to pious minds, than the articles which have occasioned the present prosecution. Yet he was defended by Sir Thomas Denman, one of the most eminent advocates of the English Bar, and now the Chief Justice of the Common Pleas of England. This distinguished lawyer, whose fame has expanded far beyond the limits of his own country, was also the Solicitor General to the late unfortunate Queen of Great Britain, and one of her able defenders on her trial before the House of Lords, when her Royal husband, who had sworn at the Altar to love and to cherish her, the Head of the Church of England, was her accuser. Sir Thomas Denman did not hesitate, in the discharge of his professional duty, in a country where there is an established religion, where there is a union of Church and State, that combination of the Altar and the Throne against the rights of man, to defend Carlile against an indictment for blasphemy. If this great man, who had so much to lose in undertaking an unpopular defence, did not shrink from an independent discharge of professional duty, why should a humble member of the same profession, who has comparatively nothing of fame to put in hazard, fear to meet the responsibilities of his calling, when the Constitution of his country, secures to all persons accused of offences, the benefit of counsel? It is not the cause, but the manner of conducting the cause, which is to bring discredit, or shed honor upon the advocate.

I appear, not to vindicate the doctrines, but to maintain the rights of the accused, and to throw over him the shield of the law, and the *Ægis* of the Constitution. I come not to defend his doctrines. They are different from those in which I was educated, and which I will teach to my children. They would deprive me of the dearest consolations of life, in the midst of the ills which flesh is heir to, and extinguish the brightest hopes, which the soul of man can cherish. I could not love my dearest relatives and friends, were I assured that they were but organized clods of the valley, and that their minds and affections, were to sink forever "in the ground." A belief in those doctrines would, as I have been taught to believe, destroy all desire of moral and mental improvement, and if this stage of existence be not the commencement of a career of virtue and knowledge, this life and the proud distinction of man in this creation would not be worth the possession, for it is the hope of a glorious immortality, which elevates man above the consideration of mere physical enjoyments, and creates the strongest impulse to virtuous conduct, and the most powerful incentive to intellectual improvement.

Having thus declared my dissent from the doctrines of the defendant, and I could not have engaged in this cause, without reserving the right of saying thus much; I shall not consider myself bound to pour forth denunciations against him. That would be betraying, not defending his cause, and meanly seeking a shelter for myself, from the misunderstanding or misrepresentation to which his counsel may be exposed, by retreating behind my client. My post is before him, and there I will stand, interposing for his defence against this prosecution, the protection of the law and the Constitution. I claim for the defendant the same legal right to the enjoyment, and the maintenance of his opinions, by his voice and his pen, which we claim for ourselves, as our political birthright guaranteed by our glorious Revolution, and proclaimed in our immortal Bill of Rights. In defending the right of free inquiry, subject to no check from the civil power, in matters of religion, I feel that I am discharging my duty as a citizen; as well as a professional advocate. The rights of conscience in relation to religious belief, cannot be made subject to the jurisdiction of human legislators, and tribunals. Matters of conscience are affairs betwixt a man and his God, not a man and his weak, erring, ignorant fellow man. If the defendant falls by this prosecution, another less obnoxious dissenter from the prevalent doctrine of the country, may be the next victim, and our Judges and Juries, will soon resolve themselves into tribunals, to test, the correctness of the creed of others, by the standard of their own belief. I was born and educated among christians professing those liberal opinions in religion, which were taught by Priestley and Belsham in England, and in this Commonwealth by that ripe, and accomplished scholar and eminent divine, the late Dr. Bentley of Salem, who was one of the leading champions among the learned clergymen in this part of the country, who have defended the Unitarian faith. I was rocked in the cradle of civil and religious liberty, and was early taught, that universal toleration was the vital principle of the Christian Religion. That principle I will teach to those, for whose moral, political, and religious instruction, I may be responsible, and never will I fail to defend that principle, while I have the power to defend aught, which is of value to me in this world.

Gentlemen. There are two general grounds of defence, and they will be now plainly stated. It will be contended that the case is not within the Statute, on which the indictment is founded, and that the Statute is in violation of the letter and spirit of the Constitution.

The case I contend is not within the Statute. I shall not repeat the first two articles, woven into the indictment, and taken not from editorial articles in the defendant's newspaper, but from communications not previously read by him, and one of which the most obnoxious, was published in his absence from the city, and for which, he is neither legally nor morally responsible. I shall not read these articles, for they are as offensive to my feelings, as to those of my learned friend, whose duty it is to conduct this prosecution, in behalf of the Government. No good can result to the defendant, the Jury, or this crowded auditory, from reading them. I shall therefore speak of them generally, being confident that the grounds of the defence, will not be misunderstood.

Let us now examine the facts of this case, and compare the articles complained of, with the Statute against blasphemy, bearing continually in mind the established principle of law, that the facts of a case must be brought within the very letter of a penal statute, the "bitter letter of the law" to be within its operation. The first article complained of, and which it will be constantly recollected, was extracted from the Free Inquirer of New York, and printed during the defendant's absence from the city, is not a "denying, cursing or contumeliously reproaching God, his creation, government, or final judging of the world;" it is not a "cursing or reproaching Jesus Christ, or the Holy Ghost;" it is not a "cursing or contumeliously reproaching the Holy Word of God" "by exposing" the "canonical scriptures" or "any part of them, to contempt, and ridicule." These are the offences against the Statute, described in the words of the Statute. Now this article first complained of, is not a denial, nor cursing, nor reproaching, of any person or thing. It is a statement, I admit in language highly offensive to sober and refined minds, of the doctrine of the belief in the miraculous conception of the Virgin. This is the head and front of this offence, and though God, Jesus Christ, and the Holy Ghost, are named in this Statute, there is no mention made of the Virgin. The article denies nothing, curses nothing, reproaches nothing. It is not even a denial of the truth of the doctrine of the miraculous conception, except as the opinion of the writer may be inferred from the manner, in which an allusion is made to the belief of such a large portion of the Christian family.

In discussing this subject, it becomes us to remember that we are treading upon a spot, consecrated by the belief of such a large portion of pious christians, and by the sensibilities of

refined minds, who respect the sincere belief of others from whom they may differ in opinion. Let us approach it, with the feelings, which are inspired by reading in the scriptures the words from the burning bush, "put off the shoes from thy feet : for the place whereon thou standest is holy ground." But it is not in my power to exclude from this cause, the consideration of subjects, which are in the minds of all Christians connected with the most solemn associations. Had it been in my power, I would as a friend to religion, have excluded from the consideration of a court of justice, this whole enquiry and prosecution, instituted, I have no doubt, with the best and purest motives. So far from serving the interest of religion, such prosecutions as the present, are productive of the greatest injury to the cause they are intended to promote. They drag forth holy things, and expose to a rude gaze in a trial before Courts, Juries, and mixed audiences, things better suited to the retired contemplations of the closet.

This article is no more than a statement in an improper manner of the belief in the miraculous conception. Has not a man who does not believe in that doctrine a right, I mean a strict legal right, to assail that doctrine, by the power of argument, and the force of satire. The most deadly weapons are used with as much zeal in religious controversies by theological, as by gladiators in political or other disputes, in which the passions of men are enkindled. Has not this very doctrine been before assailed by reasoning, and ridicule ? The pious Catholic believes in this doctrine, from the Monarch to his humblest subject—and the interests of Kingdoms, as well as families, are often in prayers of holiness, committed to the care of the Holy Virgin. None are more devout and sincere than our Roman Catholic brethren in this belief, and there are none from whom I differ in opinion, whose feelings I should be more inclined to respect ; for among them, and their learned, useful and pious clergy in this vicinity, I am happy and proud to number some of my most valued and respected friends. The members of the Church of England cherish the same belief, which is also extended throughout the ranks of Christians of almost every denomination. But there is another class of Christians who yield to none in the sincerity of their faith, and who consider this belief, wholly erroneous. If I rightly understand that faith, the Unitarians, who hold to the doctrines of Priestley and of Belsham, do not believe in the miraculous conception, and doubt the authenticity of the passages in the common editions of the Gospel, which are supposed by others to establish its truth. The opin-

ion of that class of Christians is, that the Messiah, foretold to the Jews, was to be, as Moses described him, one of the Jews, and like unto his brethren. They hold with St. Peter in Acts, 2—22, that Jesus Christ was “a man approved of God,” and with St. Paul in 1. Tim. 2—5 : that “there is one God and one mediator between God and men, the man Christ Jesus.” They consider that the expression, Son of God, is to be understood figuratively, and not literally, for Christ himself uses similar figurative language and says in his Sermon on the Mount, “Blessed are the peacemakers, for they shall be called the children of God,” and in the Lord’s Prayer he directs his disciples to use the address “Our Father.” This class of Christians further hold, that by the Holy Spirit, the word they use, is to be understood, not a distinct person, as the Trinitarians believe, but God himself, and that the Spirit of God is in God, as the spirit of a man is in him. The following quotations from Priestley’s History of the Corruptions of Christianity, will better explain this subject, than any remarks of mine.

The *Unity of God* is a doctrine on which the greatest stress is laid in the whole system of revelation. To guard this most important article was the principal object of the Jewish religion ; and, notwithstanding the proneness of the Jews to idolatry, at length it fully answered its purpose, in reclaiming them, and in impressing the minds of many persons of other nations in favor of the same fundamental truth.

The Jews were taught by their prophets to expect a Messiah, who was to be descended from the tribe of Judah and the family of David, a person in whom themselves and all the nations of the earth should be blessed ; but none of their prophets gave them an idea of any other than a man like themselves, in that illustrious character ; and no other did they ever expect, or do they expect to this day.

Jesus Christ, whose history answers to the description given of the Messiah by the prophets, made no other pretensions ; referring all his extraordinary power to God, his father, who, he expressly says, spake and acted by him, and who raised him from the dead ; and it is most evident that the apostles, and all those who conversed with our Lord, before and after his resurrection, considered him in no other light than simply as *a man approved of God, by signs and wonders which God did by him.* Acts ii. 22.

Not only do we find no trace of so prodigious a change in the ideas which the apostles entertained concerning Christ, as from that of *a man like themselves* (which it must be acknowledged were the first that they entertained) to that of *the most high God*, or one who was, in any sense, their maker or preserver, that when their

minds were most fully enlightened, after the descent of the holy spirit, and to the latest period of their ministry, they continued to speak of him in the same style; even when it is evident they must have intended to speak of him in a manner suited to his state of greatest exaltation and glory. Peter uses the simple language above quoted, of *a man approved of God* immediately after the descent of the spirit; and the apostle Paul, giving what may be called the christian creed, says, 1 Tim. ii. 5, *There is one God, and one mediator between God and men, the man Christ Jesus*. He does not say the *God*; the *God man*, or the *super-angelic being*, but simply *the man* Christ Jesus; and nothing can be alleged from the New Testament in favor of any higher nature of Christ, except a few passages interpreted without any regard to the context, or the modes of speech and opinions of the times in which the books were written, and in such a manner in other respects, as would authorize our proving any doctrine whatever from them.

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That the ancient Jewish church must have held the opinion that Christ was simply a *man*, and not either *God Almighty*, or a *super-angelic being*, may be concluded from its being the clear doctrine of the scripture, and from the apostles having taught no other; but there is sufficient evidence of the same thing from ecclesiastical history. It is unfortunate, indeed, that there are now extant so few remains of any of the writers who immediately succeeded the apostles, and especially that we have only a few inconsiderable fragments of Hegesippus, a Jewish christian, who wrote the history of the church in continuation of the *Acts of the Apostles*, and who travelled to Rome about the year 160; but it is not difficult to collect evidence enough in support of my assertion.

The members of the Jewish church were, in general, in very low circumstances, which may account for their having few persons of learning among them; on which account they were much despised by the richer and more learned gentile christians, especially after the destruction of Jerusalem, before which event all the christians in Judea (warned by our Saviour's prophecies concerning the desolation of that country) had retired to the north east of the sea of Galilee. They were likewise despised by the gentiles for their bigotted adherence to the law of Moses, to the rite of circumcision, and other ceremonies of their ancient religion. And on all these accounts they probably got the name of *Ebionites*, which signifies *poor* and *mean*, in the same manner as many of the early reformers from popery got the name of *Beghards*, and other appellations of a similar nature. The fate of these ancient Jewish christians was, indeed, peculiarly hard. For, besides the neglect of the gentile christians, they were, as Epiphanius informs us, held in the greatest abhorrence by the Jews from whom they had separated, and who cursed them in a solemn manner three times *whenever they met for public worship*.

In general, these ancient Jewish christians retained the appellation of Nazarenes, and, it may be inferred from Origen, Epiphanius, and Eusebius, that the Nazarenes and Ebionites were the same people, and held the same tenets, though some of them supposed that Christ was the son of Joseph as well as of Mary, while others of them held that he had no natural father, but had a miraculous birth. Epiphanius, in his account of the Nazarenes (and the Jewish christians never went by any other name) makes no mention of any of them believing the divinity of Christ, in any sense of the word.

It is particularly remarkable that Hegesippus, in giving an account of the heresies of his time, though he mentions the Carpocratians, Valentinians, and others who were generally termed Gnostics (and who held that Christ had a pre-existence, and was man only in appearance) not only makes no mention of this supposed heresy of the Nazarenes or Ebionites, but says that, in his travels to Rome, where he spent some time with Anicetus, and visited the bishops of other sees, he found that they all held the same doctrine, that was taught in the law, by the prophets, and by our Lord. What could this be but the proper unitarian doctrine, held by the Jews, and which he himself had been taught, though he had, no doubt, a particular view to the tenets of the Gnostics which appeared in the earliest age, and which were strongly reprobated by the apostles and their followers?

That Eusebius doth not give this account of the primitive christian faith, is no wonder, considering his prejudice against the unitarians of his own time. He speaks of the Ebionites, as persons whom a malignant demon had brought into his power, and though he speaks of them as holding that Jesus was the son of Joseph, as well as of Mary, he speaks with no less virulence of the opinion of those of his time, who believed the miraculous conception, calling their heresy *madness*. Valesius, the translator of Eusebius, was of opinion that the history of Hegesippus was neglected and lost by the ancients, on account of the errors it contained, and these errors could be no other than the unitarian doctrine. It is possible also, that it might be less esteemed on account of the very plain unadorned style, in which all the ancients say it was written.

Almost all the ancient writers who speak of what they call the heretics of the two first centuries, say that they were of *two kinds*, the first those who thought that Christ was a man only in appearance, and the other that he was a mere man. Tertullian calls the former *Docetæ* and the latter *Ebionites*. Austin speaking of the same two sects, says, that the former believed Christ to be God, but denied that he was man, whereas the latter believed him to be man, but denied that he was God. Of this latter opinion Austin owns that he himself was, till he became acquainted with the writings of Plato, which in his time were translated into Latin, and in which he learned the doctrine of the *Logos*.

The following is a note, in Adams' View of Religions, to the article Unitarians.

Dr. Priestley, in his history of the Early Opinions concerning Christ, calls in question the doctrine of Christ's miraculous conception. He disputes the authenticity of the introductory chapters to Matthew and Luke; because Mark and John do not give the least hint of a miraculous conception; and yet, if any part of the history required to be authenticated, it was this. He thinks it is probable, that the gospel of St. Matthew was written in Hebrew; and as the two first chapters were not in the Ebionite copies of the gospel, he takes it for granted they were not written by Matthew, but prefixed to his gospel afterwards. He supposes, that Marcion's copy of Luke's gospel, which begins at the third chapter, was genuine. But admitting, that the introductory chapters of Matthew and Luke were written by them, this learned divine supposes, that the evidence of the gospel history is exactly similar to that of any other credible history, depending upon human testimony; and that the scriptures were written without any particular inspiration, by men, who wrote according to the best of their knowledge, and who, from their circumstances, could not be mistaken with respect to the greater facts, of which they were proper witnesses; but, like other men, subject to prejudice, might be liable to adopt an hasty and ill grounded opinion concerning things, which did not come within the compass of their knowledge. Dr. Priestley says, that though there are but few, who disbelieve the miraculous conception, he supposes, there have always been some, and those men of learning and character among Christians; and that, to his certain knowledge, the number of such is increasing, and several of them think it a matter of great importance, that a doctrine, which they regard as a discredit to the Christian scheme, should be exploded.

Gentlemen,—We perceive that the doctrine of the miraculous conception, was at a very early period of the history of the Christian Church, a subject of dispute. The belief in the doctrine was denounced with virulence by Eusebius one of the early fathers as a "madness." If the writer of this article believed with Eusebius that it was a madness, had he not as good a right as Eusebius to ridicule and denounce it? If it be a heresy, it must be admitted to be of a kind, not likely to be treated with much delicacy by unbelievers. If it be a false doctrine, although the manner adopted in assailing it may be improper, yet surely it cannot be blasphemous to attack a heresy and a "madness."

I have said in as strong terms as I can command, that I condemn the manner of assailing this doctrine, and if I have not

used language forcible enough, give me terms more expressive and I will adopt them. But if the defendant, who does not profess a belief in Christianity, is to be condemned, what shall be said of those, who, professing a belief in Christianity, have employed much coarser language, when attacking the belief of their fellow christians? If all the violations of the laws of decency and propriety of manner in religious controversies, are to be punished, your Courts must be multiplied, and their whole time will be occupied with corrections of the virulence of religious quarrels, to the entire exclusion of all other business. I hold in my hand a volume of Dr. Priestley's History of the Corruptions of Christianity, containing a reference to a work of Paschasius Radbert one of the champions of the doctrine of transubstantiation, on the subject of the miraculous conception. This work though undoubtedly written, by a divine of unsullied reputation, is nevertheless composed with such a particularity of description, that I should at this day, offend the modesty of any audience, by reading the passage referred to. Indelicate as may be considered the article in the defendant's newspaper, yet it will well bear a comparison with a celebrated work of an eminent divine of the English Church, who aspired to be a Bishop, and who after this publication, was appointed a Dean of the Church, in the second city of the British Empire, I mean Swift the Dean of St. Patrick's in the City of Dublin, and I allude to his Tale of a Tub, which is now before me. This work was written to insult the Roman Catholic Religion, and the Calvinistic persuasion, and to build up the Church of England, for Swift was a High Churchman in his religion, and a Tory in his politics, characters which are bound together like the two bodies of the Siamese Twins. By the term High Churchman, I mean no disrespect to the members of the communion of the Church of England, who are strict in their religious observances.—I allude merely to a division which existed about the time of Swift, rather political than religious, between the High and the Low Churchmen, the former being the arbitrary and bigoted, the latter being the more liberal, and tolerant members of that Church.

But to return to Dean Swift and the work of this divine ; the Tale of a Tub. It is filled with such rank grossness, vulgarity and obscenity, that I do not wish, nay I do not dare to read to you, more than a single extract. This extract contains a biting and vulgar sarcasm upon the belief of the pious Catholics, relating to the Virgin and the cross and other subjects.

The following is the extract, and it is one of the most decent which I could select in the book.

However, it is certain, that Lord Peter, even in his lucid intervals, was very lowly given in his common conversation, extreme wilful and positive; and would at any time rather argue to the death, than allow himself once to be in an error. Besides, he had an abominable faculty of telling huge palpable lies upon all occasions; and not only swearing to the truth, but cursing the whole company to hell, if they pretended to make the least scruple of believing him. One time he swore he had a cow at home, which gave as much milk at a meal as would fill three thousand churches; and, what was yet more extraordinary, would never turn sour.* Another time he was telling of an old *sign-post* † that belonged to his father, with nails and timber enough in it to build sixteen large men of war. Talking one day of Chinese waggons, which were made so light as to sail over mountains: *Z——ds*, said Peter, *where's the wonder of that? By G——, I saw a large house of lime and stone travel over sea and land, granting that it stopped sometimes to bait, above two thousand German leagues.‡* And that which was the good of it, he would swear desperately all the while, that he never told a lie in his life; and every word, by *G——*, *Gentlemen I tell you nothing but the truth; and the d——l broil them eternally that will not believe me.*

* The Virgin Mary. † The Cross. ‡ The Chapel of Loretto.

This is the manner in which this divine of the Church of England, insulted the sincere opinions of the members of a Church, which embraces in its bosom, by far the greatest portion of the christian family, a Church venerable for its antiquity, and honored for the accomplishments and learning of its Clergy. Yet the Tory Judges of England, whose enormous salaries, and whose rank and titles, have always depended, on maintaining the established religion, and whose craft would be in danger, were the union of Church and State destroyed, these Tory Judges, I say overlooked all this indecency of Dean Swift, and instead of being punished, he was rewarded for the prostitution of his talents. These English Judges, whose decisions have been read to you in the opening speech in support of this prosecution, declaring christianity to be a part of the common Law, could bear with all Swift's impurities of style, because he was the champion of an arbitrary government, and the established religion. Swift could with impunity ridicule the Virgin under the figure of a cow, for it was their ox, who was pushing with his horn and goring their ad-

versaries, and every thing with these English Judges is decent, which assails other Churches, and every thing is indecent which assails their established Church, and this is the whole of their law christianity.

You will find this indecent book in the library of Harvard College, in the Boston Athenæum among the volumes of the British classics, in the private libraries of the most accomplished scholars of Europe and America, in the most respectable book stores, and publicly sold at the book auctions. Yet we have never heard of any indictment either in England, or this country, for the publication of the Tale of a Tub, and the writer has been honored both in his own time, and ever since, as one of the most brilliant luminaries of British literature. All this has passed under the eyes of the Judges, Juries and prosecuting officers of Great Britain, and the United States, and to this day no one has complained. No prosecution has been instituted, against the printers who publish, the booksellers who sell, the Directors of the libraries who circulate this most indecent production of an eminent divine of the Church of England. If those who minister in holy things, the servants of the altar, defile decency in their religious controversies, and publish the most gross outrages upon the feelings of other christians, vulgarities which would shock the tenants of Bedlam, and disgust the inmates of a State Prison, how can decorum be expected of those, who have no respect for the christian religion, who believe its priests to be grossly deceived or grossly deceiving, and who seek to overturn its altars? Is vulgarity, the privileged monopoly of the high dignitaries of the Church like Swift? If those dignitaries set such examples of a prostitution of sentiment, and style, they have no right to expect from the adversaries of the Church more propriety of manner, than they practice in their controversies with each other. Why begin with this defendant, when there are so many offenders of high rank to be called to the bar before his turn can arrive?

This offensive article is a translation, as appears from the newspaper, which is the subject of the indictment, from the works of Voltaire, whose writings may be found in the same libraries, as those of Swift, and are circulated in the same manner. And here gentlemen allow me a short digression. What made Voltaire an infidel? He was a deist, not an atheist, as he has been often represented, for in his works are to be found some of the most beautiful, and convincing essays, shewing the truth of the universal belief, of all the wise nations

of antiquity, and indeed of all nations, in the existence of an all wise, good and powerful creator of the universe. Madame De Staël in her work upon the French Revolution, abounding with enlightened and profound reflections, has told us, how Voltaire became an infidel. He was reared about the time of the celebrated repeal of the Edict of Nantz, the famous Edict made by the Fourth Henry granting toleration to his protestant subjects. That Edict was repealed by his grandson Louis the Fourteenth, and in the age of Voltaire the Calvinists of France were dying on the wheel, the gibbet, the rack and the stake, and fleeing from persecution by thousands and tens of thousands into exile. His youthful bosom burned with indignation against persecution, next against the bigots whose blind zeal kindled the flame, and finally against the religion, in whose prostituted name those horrible persecutions were perpetrated. From his youth to his old age, he maintained with all the energy of his mighty mind, a warfare with the priests and the altar, and the influence of his writings is now immeasurable. This is the account which the illustrious daughter of Neckar gives of Voltaire's infidelity, and it is a warning in all ages and countries, to the true friends of christianity, never to wield the flaming sword of persecution, in the name of a religion, whose founder has declared, that they who use the sword, shall perish by the sword.

I am ready to commence an era of reform in the management of religious, political, and all other controversies. But let the reform commence in the right place. Have not the best men in our country, been slandered in this State, in pulpits, and newspapers, and their principles, the vital principles of liberty, reviled? Is not the same vile work in the newspapers now going on? Yet we hear, and for myself I desire to hear, of no indictments. But if indictments are to be resorted to, in order to suppress vulgarity, and violence in essays relative to religion, why should not Justice aim at a higher mark, than the defendant? Let the blow fall upon those of higher rank, and more extensive influence, and the example will be more powerful, and the effects more extensive and enduring. Call before you the President and Government of your College and demand of them, why they suffer Swift's Tale of the Tub and Voltaire's works to remain in the College library and circulated among their students. Bring before you the Directors of your Athenæum, and call them to account, for circulating these works among the proprietors of that splendid institution. Summon to your bar the respectable booksellers of the

city, for selling these works. When you have done all this to purify the public taste, call upon Abner Kneeland, and he will obey your summons. But do not begin at this late day, the work of reform, with the weak. It has too much the air of oppression. It has too much the appearance of feeling power, and forgetting right, and it will have the effect, which prosecutions of the strong against the weak have always had, it will make the strong weak, and the weak strong.

This very article republished from the Free Enquirer in the Investigator, was originally published in New York, a city containing a population of near three hundred thousand persons. In that city, there are as I understand, but two Unitarian Societies, and one of these is now without a pastor. The rest of the Christians of that mighty city are Trinitarians. Yet the original publisher of this article was not indicted. It was reserved for the Grand Jury of this Unitarian city, this citadel of liberal principles in religion, to commence this prosecution, against the Editor of a paper where it was merely republished. In the Orthodox city of New York, they treated the ribaldry with contempt, and did not consider it necessary to sustain the cause of religion by the faggot, the gallows, the pillory, or the whipping post. I had hoped in this city, boasting of its liberal opinions in religious matters, never to have known a prosecution on a penal law relating to religion, for I believe all such laws to be unwise and unjust, and prohibited by our glorious Constitution.

This is the boasted land of toleration. No, gentlemen, that is not the proper word, for who shall presume to tolerate another, when the latter has an undeniable right to enjoy and maintain his own opinions? I should have said this is the boasted land of civil and religious freedom, guaranteed by written Constitutions of Government, so plain that he who runs may read the privileges which they secure, and the rights they proclaim. Yet here in this City of Boston, when we have about finished one third of the nineteenth century, we are engaged in the trial of an indictment founded on a penal Statute respecting religion; a Statute, by which the defendant may be punished, by sitting on the gallows, the pillory, or imprisonment, for publishing a miserable ridicule of the doctrines of the miraculous conception; a coarse attack upon the modes of prayers often addressed to the Deity; a calm profession of disbelief in the belief of the Universalists, in the divinity of Jesus Christ, and in the doctrine of the resurrection. Call it what you may here, the world and posterity, will call all such prosecutions, persecu-

tions, and instead of crushing by these means, the cause which is attacked, its strength will inevitably be increased, unless the nature of mankind shall be changed, for there never was any good yet done by the faggot, the wheel, the rack, the gallows, the pillory, the whipping post and the dungeon in religious feuds, except in the cause against which, these engines of power have been employed.

Whether the Unitarians are the authors of this prosecution or not, if it shall be productive of credit they will in consequence of the Unitarian character of this city have all the credit, and if it shall be a source of discredit, they must bear it. Already this prosecution has been publicly announced in the Orthodox city of New York in the following manner.

"THE HOLY INQUISITION RE-ESTABLISHED IN BOSTON."

I regret this prosecution, as I believe it will be injurious to the Unitarian cause, of which this city and its vicinity is the head quarters, and I fear that prosecutions on penal Statutes in relation to religion in this city, will cast an imputation upon, and create a disservice to the cause of liberal principles.

Gentlemen. I have now said nearly all which I consider necessary and proper in relation to the matter and the manner of the first article referred to in the indictment. Yet there is something more to be said in relation to this article, and perhaps it is of more importance than any thing, which has been addressed to you on this part of the case. Whatever may be the demerits of that article either of matter or manner, whatever may be the sins of it, which may lay at the door of its author, the defendant is as innocent as you are, and for that article he is neither morally, nor legally responsible.

You have it in evidence from the foreman in the office of the Investigator, the only witness examined on the part of the prosecution, and it seems the Government have no scruple, in calling a witness upon the stand, to convict a party accused, even from the mint of irreligion, the infidel printing Office—you have it I say from the witness, that it is the custom of Mr. Kneeland, to put in the copy drawer, as it is called, the articles which he intends shall be published, that it is the well understood regulation of the office, that nothing is to be printed in the paper, except it be taken by the compositor from this drawer, —that Mr. Kneeland went out of town, that during his absence the Free Inquirer arrived from New York, and that a clerk *took it from the post office*, and printed this article before the

defendant's return to the city. This is the testimony of the Government's witness, and yet you are asked to convict Mr Kneeland for an act, which he never committed, any more than any gentleman on this Jury. This is in violation of the plainest principles of justice and law, for no person can commit a crime, without a wrongful act, and a guilty intention. There was neither intention nor act on the part of the defendant.

You have been told of a *nisi prius* decision of Lord Kenyon, a Tory Judge, straining justice and law to establish the position, that a printer of a newspaper is criminally responsible, for a publication in his newspaper—without his knowledge. I admit that he is civilly responsible, because he is bound to repair any damage done to others, by his agents, acting in the course of their employment or agency.

But this is not the doctrine of the criminal Law. A person is answerable morally and legally only for his own offences—not those of others, in which he has no participation. The English decisions on the law of libel, in favor of the Crown, are entitled to but little respect in this land of liberty. In England they have a monarchical Government and an established religion, and their Officers of State and Church, are necessarily all interested and united, to maintain the abuses, corruptions and oppressions by which their wealth and power are obtained and secured. Consequently you can expect little purity even in the courts, in their decisions upon the law of libel, in political, or religious causes, for the press is the great engine, which all corrupt combinations against the equal rights of mankind dread, and by the influence of which it is well known, these unjust combinations will finally be destroyed. It is in vain to expect even common honesty in the decisions of the English Judges relating to the law of libel, for the whole history of England proves, that when the Government has desired to oppress the people, and trammel the freedom of speech and the press, they have generally found the Judges, willing instruments of their oppressions. There are some splendid exceptions to the correctness of this remark, but unfortunately they are few, and therefore more noted, observed and praised. Shew me an American decision, in which such a tyrannical doctrine has been recognised. None such has been produced, and I hope for the honour of our country, none such can be found. I hope no such decision will ever disgrace our judicial history.

Gentlemen. A different doctrine from this has been laid down, even in the English Courts, not in a hasty *Nisi Prius* trial, but after solemn argument and deliberation, by the full

Court of the King's Bench. In the celebrated case of *Almon*, the bookseller prosecuted for selling the famous letters of Junius, and where the Court took care to have the defendant convicted, it was decided that when a book was sold in a bookseller's shop, by his agents, it was *prima facie* evidence of a publication by the principal. But the Court admitted that it was only *prima facie* evidence against him, liable to be rebutted by testimony to show that it was without his knowledge or assent. The following are the remarks of the Judges as reported in 5 Burrowes 26, 86.

Lord Mansfield said and repeated, that Mr. *Mackworth* had understood him perfectly right; and he was very glad to find that there was no doubt of what he had said. The substance of it was, that in point of *law*, the buying the pamphlet in the public open shop of a known professed bookseller and publisher of pamphlets, of a person acting in the shop, *prima facie*, is evidence of a publication by the master himself: but that it is liable to be contradicted, where the fact will bear it, by contrary evidence tending to exculpate the master, and to shew that he was not privy nor assenting to it nor encouraging it. That this being *prima facie* evidence of a publication by the master himself, it stands good till answered by him; and if not answered at all, it thereby becomes *conclusive* so far as to be sufficient to convict him. That proof of a public exposing to sale and selling, at his shop by his servant, was *prima facie* sufficient; and must stand till contradicted or explained or exculpated by some other evidence; and if not contradicted, explained or exculpated, would be in point of evidence sufficient or tantamount to conclusive.

Mr. Justice Aston laid down the same maxim, as being fully and clearly established, "That this *prima facie* evidence (if believed) is binding till contrary evidence be produced." Being bought in a bookseller's shop, of a person acting in it as his servant, is such *prima facie* evidence of its being published by the bookseller himself: he has the profits of the shop, and is answerable for the consequences. And here is a corroborating circumstance; namely, that it professes to be printed for him. It is as strong a case as could be put. The sale in his shop is sufficiently proved: and he is answerable for what is done in his shop. And here is no sort of proof produced in contradiction or exculpation. This *prima facie* evidence, not answered, is sufficient to ground a verdict upon: and there appears no reason for granting a new trial.

Mr. Justice Willes was also of opinion that there was no foundation for the motion for a new trial; and that, upon all the circumstances of this case, Mr. *Almon* was answerable as publisher of the libel. He is a common known bookseller and publisher; and it imports, upon the face of it, to be printed for him; and it was

bought in his shop. This is sufficient *prima facie* evidence of his privy: and no contrary evidence was produced by him. It was liable to be refuted or explained: but as it never was, nor any excuse shown, it stands good to convict him.

Mr. Kneeland authorizes me to declare that he never would have voluntarily suffered this article to be republished in his paper. It filled him with disgust, and he intends at a proper time, when this trial shall be concluded, to publish his regret, that it found its way into his newspaper.

Gentlemen. I have now finished my comments on this article, first complained of in the indictment. Let us pass to the consideration of the second subject of enquiry in this prosecution.

The second article I readily admit is also highly offensive to good feelings and taste. I wish here to be considered, as repeating, what I have before said, in reference to the other article. Accustomed as we are from childhood to consider such subjects, it is perhaps even more revolting to the feelings, than the first article complained of. But it is not Mr. Kneeland's composition, it is no emanation of his mind. It is contained in a communication, as I understand, either not read or hastily examined before publication: and though this is no legal excuse, in a moral point of view, it certainly is some palliation.

I cannot bring my mind to believe, that the writer intended, or would dare to cast ridicule upon such a sacred subject as the Supreme Being. The intent should be carefully considered. Is it not more reasonable and charitable to suppose, that the intent of the writer was, to ridicule merely strange ideas of their worship, which the persons he describes as offering up absurd and contradictory prayers, must have in their minds? The object of the article, both the manner and the matter of which I condemn, is to expose to ridicule, the strange modes of prayer, which many very piously adopt. It is however very well known, that the subject of the efficacy of prayer, is one, which has agitated the minds, and excited the speculations of the most devout christians. Have not volumes of theological lore been written, and a vast number of profound sermons preached upon this deep and important subject? Is it not to this day often made the theme of very able and eloquent discourses, by our enlightened clergy, of almost

every denomination? The subject is one which presents in the outset, a very serious consideration to every reflecting mind. It seems exceedingly difficult to understand, how the determinations of an all wise Being, can be affected by the resolutions and wishes of frail mortals. It is true Jesus Christ ordained prayer, and directed that perfect form of prayer, the Lord's prayer, to be observed. But he also says. "Your Heavenly Father knoweth what things ye have need of, before ye ask him." The style of expression in prayer, which many well meaning, but uninformed persons adopt, often renders, in the estimation of the better informed, the exercise any thing rather than a serious exercise of devotion. So sensible, of the bad effect on others of absurd peculiarities in prayer, have been the divines of the Roman Catholic Church and the Church of England, that they have established their elegant services, in order to preserve the decency of divine worship. As a republican, I detest the Hierarchy of England, with its dignitaries the Lords Spiritual, proudly clad in their lawn, and rolling in riches, wrung by the tithe system from the hand of honest industry, and yet claiming to be the representatives of the humble fishermen of Galilee. That lofty Hierarchy was the cruel persecutor of our pilgrim ancestors, and drove them across the ocean, to seek for liberty of conscience, in this distant land, and the spot on which their weary feet first rested, in the new world, was then covered with the snows of a northern winter. That Hierarchy in the days of the American Revolution, was the haughty and merciless oppressor of our valiant fathers, and sustained throughout the whole of that memorable struggle, the arbitrary pretensions of the British Government, to enslave our country, and all their unjustifiable, violent and cruel measures to destroy our people, even to the employment of the heathen savage, in murderous warfare, against their fellow christians the descendants of the Puritans, the former victims of Clerical oppressions. Those proud and bigoted Lords Spiritual, are now, as in former times, the same unyielding adversaries of the rights of man, and obstinate opponents of all reformatations, calculated to alleviate the burdens, and elevate the condition of the people, to whom they assume to be the guides to Heaven, while in this world, they are constantly pillaging them of their property, and trampling upon their liberties.

But with all my political abhorrence of this Hierarchy, and differing in faith from the doctrines of their Church, I admire many of the beautiful, and solemn compositions in their

Book of Common Prayer. I often read those compositions, always with delight, and never I hope without improvement, and of all splendid human performances, to my mind the most magnificent is the solemn service of the Church of England, for the burial of the dead, a service, which lifts the soul of the hearer from earth to Heaven. Ask my learned friend, the Counsel for the Commonwealth, who was reared in the bosom of this Church, why these fine forms of prayer have been devised, and he will tell you, to guard against absurdities, too frequent in the matter and the manner of prayer by uninformed persons, and to preserve the decency of divine worship. Would not this be an admission, that there were in use, modes of prayer of a highly objectionable character, and deserving remark and needing reformation, although as I cheerfully admit, not a fit subject for levity and coarse ridicule.

I have supposed that it was now an opinion, if not generally entertained, certainly believed by many devout, and enlightened christians, of various denominations, that the chief efficacy and advantage to be expected from prayer, is the effect, which the exercise is calculated to produce on the heart of the suppliant pouring forth the aspirations of the soul to Heaven, the same effect, which is attained by silent and solemn meditation, among that useful, benevolent and pious class of christians the Quakers, whom our equally pious ancestors, persecuted with such blind and furious zeal, even to the whipping post, the pillory and the gallows, the shame and terrors of which punishments, are now denounced upon the head of the defendant silvered o'er by Time.

Gentlemen. Let us examine this subject a little further, and it will be found that the defendant's newspaper, has not been the first organ to disparage prayer. The religious Puritans disparaged, with as much scorn and contumely, the modes of prayer adopted by those, from whom they differed in sentiment, as the writer of this article in the Investigator, disparages the modes of prayer adopted by those, from whom he differs in sentiment. In Southey's History of the Church, Vol 2. page 359, we find that the Puritans disparaged social prayer. The following is an extract from that work.

Because of the superstition connected with the mass, the Puritans, falling into an opposite extreme, disparaged social prayer and thanksgiving, and attached as much importance to sermons as the Romanists to what they deemed the sacrifice of the altar. They maintained the extravagant and pernicious opinion, that the scrip-

ture had no efficacy unless it were expounded in sermons, the word no vital operation, unless it were preached from the pulpit; that prayers and sacraments, without sermons, were not merely unprofitable, but tended to further condemnation.

Gentlemen. Our Puritan ancestors in this Commonwealth were not more mild in their denunciations of the prayers of the Church of England, than were their brethren, the other side of the water, who under Oliver Cromwell shook to their foundations, the political and ecclesiastical establishments of England. Let me read to you an extract from the last will and testament, of one of the early and shining lights of the New England Churches, the celebrated Chauncey, the second President of Harvard College. It contains an attack, upon the prayers of those from whom he dissented, of the most violent character. The following is an extract, from the biographical article on President Chauncey contained in Peirce's History of Harvard University.

He did not even omit it in his last will, the preamble to which contained strong expressions of self-condemnation for his "so many sinful compliances with and conformity unto vile human inventions, and will-worship and hell-bred superstition, and patcheries stitched into the service of the Lord, which the English *mass-book*, that is, the Book of Common Prayer, and the ordination of priests, &c., are fully fraught withal."

This ebullition of bitter feeling is not poured forth in a fugitive newspaper article; but deliberately recorded in that solemn act, in which a man usually bequeathes his soul to Heaven, while he leaves his earthly prejudices to be buried with him in the grave. Yet here we find one of the most eminent divines and scholars, who have illuminated and adorned our country, a famous President of the most famous University in the new world, denouncing the forms of prayer adopted by the second Church in Christendom in power and renown as a "hell bred superstition." Compare the extract from President Chauncey's testament in relation to prayer, with the article complained of on the subject of prayer in the defendant's newspaper. If the passage in the newspaper be gross and offensive levity, the passage in President Chauncey's last will, is full of uncharitableness, and all the cruelty of un-governed wrath; carrying the hatred of religious contention even beyond the grave. If President Chauncey had a right to assail the modes of prayer, in use among one class of chris-

ians, is not the right of the defendant, and his correspondent equally indisputable, to assail the modes of prayer, which they dislike, and are disposed to condemn. Surely levity is not more objectionable and illegal than deliberate hate, recorded in a solemn memorial destined to command the attention of posterity, to the latest generations of the Alumni of Harvard University.

But it will be said the article contains a ridicule of the Supreme Being. I have already attempted to shew, that this could not upon a fair construction of the article, have been the intention of the author. But were it even so, while as christians and men, we cannot but be shocked and condemn it, as Jurors you cannot convict either the author or the publisher, by the laws and Constitution of this Commonwealth. Persons capable of such acts, are more the objects of compassion, than punishment. We should offer them the sympathy of our prayers, but no gallows, no pillory, no whipping post. These are not the engines to convert men from even the most fatal delusions and errors of opinion. If vengeance be in store, to God alone, who knows the heart, belongs the dread prerogative; "vengeance is mine, and I will repay, saith the Lord."

Gentlemen, we now advance to the consideration of the third article, extracted from the defendant's newspaper, and made a subject of accusation in the present indictment. This is an editorial article, written by Mr. Kneeland, and for every sentence, word, and syllable, he is morally accountable. These are the only compositions of the defendant, which I have ever seen, for before this trial I never happened to see his newspaper. It was put into my hands, in the course of preparation for this defence. Let us examine this article carefully, and see if it comes within the letter of this statute. The first paragraph is the one in which it is contended, that the defendant has denied God. There is no pretence that in any part of this editorial article, written and published by the defendant, there is any thing like a contumelious reproaching of God, Jesus Christ, the Holy Ghost, or the Holy Scriptures. The offence, if there be any, consists in denying God. Now what are the words? They are as follows:

"Universalists believe in a god which I do not; but believe that their god, with his moral attributes, (aside from nature itself) is nothing but a chimera of their own imagination."

The utmost which can be made of this paragraph, which is copied literatim et punctuatim, from the original article in the Boston Investigator, is an expression of the defendant's disbelief

in the opinions or creed of the Universalists. Were it even an expression of the defendant's disbelief in the existence of a Supreme Being, it would not be a denial of God, within the meaning of this penal law, which it has been shown, is to receive a strict construction. There is a material difference between a disbelief and a denial. The one is a declaration of the state of our own minds, the other is an attempt to influence the minds of others. The one is a declaration, that the party is not satisfied of the existence of a person or thing, the other is a declaration, that the party is satisfied that there is no such person or thing. The one may be the expression of doubt, the other is an assertion that there is no doubt on the subject, and the allegation is a positive denial. It was the meaning of the legislature to prohibit a positive allegation, a direct denial of the existence of God, and not to punish doubts and disbelief, which may be occasioned in the minds of men by the clouds of error, which sometimes darken human contemplations, and intercept the rays of the light of truth. If the sentence complained of, be the expression of a mere disbelief, and all the strain which can be put upon this sentence, will not carry it beyond that extent, the case is not within the provisions of the Statute against denying God.

But, Gentlemen, the defendant never intended to express any disbelief in God. He authorizes me so to declare, and he was filled with astonishment, when he found that such a construction had been given to his language. He is no atheist and he hurls back upon his accusers and persecutors the reproach which is attempted to be cast upon him. Gentlemen, is not atheism like witchcraft an impossible offence? Can a man in his senses behold the wisdom of nature's laws, without cherishing a belief in nature's God? These laws are obviously the decrees of omnipotence, omniscience, and universal benevolence, and the harmony and vastness of the system of the creation, evince the existence of one Supreme Law Giver and Architect of the Universe. It was a remark, made I believe by the late Governor of this Commonwealth, in the Massachusetts Convention of 1820, that God had made man a religious being. This seems to me, to be philosophically correct, and to be proved by the universality of the belief of a God among the civilized and the uncivilized of the great human family. We find this belief spread from the North to the South; in the East and the West, in the palaces of Princes; in the cottages of the poor, in the seats of learning, in the abodes of ignorance; in the tents of the dwellers on the great deserts, in the hovels of the Hottentots under the blazing sun of Africa: and as we learn

from the celebrated navigator Parry, even in the snow huts of the Esquimaux in the dark and frozen regions near the North Pole. A man may be bewildered in the mazes of a metaphysical labyrinth, the creation of his own mind. But the Deity has made him a religious being; and has impressed the truth, there is a God, on the living tablet in his breast, and he can no more eradicate that belief, than he can tear his heart out, and trample it under his foot. I contend that there is, that there can be no such crime as atheism, although the bloody records of superstitious cruelty exhibit instances of convictions for this offence, as they do of convictions for witchcraft, an offence which never was committed since light first broke on this creation, and never can be committed so long as that light shall remain to cheer the world.

I have said the defendant never intended to express even a disbelief of the existence of God, and that he maintains no such disbelief. He intended by that article merely to say, that he dissented from the belief of the Universalists, with whom he was then engaged in a controversy: in saying that he did not believe in "their God" he meant, that he did not believe in their creed. There are some legal rules of construction, which may aid your inquiries in this part of the case. It is a sound and well established rule of construction of a man's language, as it is of consideration of his acts, in a criminal case, to adopt in all cases of doubt, the construction or consideration most favorable to the prisoner. You are to adopt the most mild and merciful, and tolerant construction. So far has this principle been carried, that formerly it extended even to civil cases. Anciently it was the rule in all civil actions for words, to construe them in favor of the defendant in the milder sense, when they admitted of different interpretations. This rule is altered in civil cases, but in criminal cases, it is not relaxed in the least degree. Apply these humane principles of the law to the case under consideration, and the defendant will at once be acquitted of this part of the charge.

Without needing to seek shelter under this principle of the law, respecting the construction to be applied to expressions of a doubtful character, the defendant contends that there is no doubt in this case, and that his meaning was clearly and grammatically expressed. He contends that by every rational and grammatical construction, it is apparent, that he did not intend to express a disbelief in God, but merely in the belief of the Universalists. He meant to use, and he contends that he did use the word God as it is often used, by persons of one opinion in speaking of them of a different opinion, as synonymous with

belief. This is a common mode of expression, not only in popular discourse, but in the most regular compositions. A Universalist says, "I do not believe in the God of the Calvinists." What does he mean? Surely, he does not intend and cannot be understood to deny God. He is not an atheist. He merely intends to declare, that he does not believe in the creed of the Calvinists. So a Unitarian says, I do not believe in the God of the Trinitarians. He is not an atheist, he merely means to affirm that he does not believe in the Trinitarian faith. The defendant by a similar mode of expression intended to declare, and did declare, that he did not believe in the creed of the Universalists, and no more.

Let us take a glance at the punctuation of this sentence. The words are "Universalists believe in a god which I do not; but believe that *their god*," &c. There is no point after the word "God" in the first clause. The point is after the word "not," and it is a semicolon. But in the next paragraph the punctuation is different. There the words are "Universalists believe in Christ; which I do not," with a comma after the word Christ. In the latter sentence, the defendant intended generally and absolutely to express his total disbelief in the divinity of Jesus Christ. In the first paragraph he did not intend to express generally and absolutely his disbelief in God, but in "*a God*" that is, the "God" or belief of the Universalists. He solemnly declares, before this tribunal, that this was his object, and that the difference in the punctuation in these two sentences, was made deliberately, (though surely not anticipating in this land of liberty, and toleration, any such prosecution as the present) with the distinct objects of marking the difference, in the extent of his professions of his disbelief in relation to the Deity and Jesus Christ.

Let us now test this sentence, by the rules of grammar. The defendant does not say, the Universalists believe in God, which I do not. Had he used such an expression, there would have been no loop to hang a doubt on respecting his meaning. It would have been plain as day. It would have been a profession of a disbelief generally and unequivocally, in the Supreme Being. But the expression is "Universalists believe in *a God* which I do not." This article *a* limits the meaning as he intended it should. He intended to say merely that he did not believe in "*a God*," that is the 'God' or creed of the Universalists. What do the grammarians teach us, respecting the office of this article? The rule in Murray is that the article *a* "is used in a vague sense to point out *one single thing* of the

kind in other respects determinate or indeterminate." The Trinitarian says Unitarians believe in a God which I do not. Is the Trinitarian an atheist? Does he deny God by this expression? Surely not. So far from professing a total disbelief, he intends to express a more extensive belief, than the Unitarians, to declare, that he believes in more than they do, that he believes in the Father the Son, and the Holy Ghost, whereas Unitarians believe only in the Divinity of God. Apply this rule to the sentence under consideration and it is apparent, by the grammatical rule of construction, that the writer intended to designate and distinguish one particular God or belief of the kind of Gods, or creeds, worshipped or cherished in the world. Again, the article *a* is sometimes used, in a definite sense, and even some times called the definite article *a*, as will be perceived in the note to Alger's Murray in the Cincinnati Edition, 1832. There is an imperfection in the English language having but two articles, which does not exist in the French. In French there are three articles, the indefinite, the definite, and the partitive. The latter is used to limit and restrain the sense, which in English, is often imperfectly done, by the indefinite and definite articles; here the article was used in a definite and limited sense, and would not have been used, in framing that sentence, had not the defendant thereby intended to limit his disbelief, to the disbelief of the particular God or creed of the Universalists. When he speaks of his disbelief in Christ, he does not say *a* Christ, but simply, absolutely, unequivocally, without limit or qualification, declares that he does not believe "in Christ." He would have adopted a similar construction of the sentence, and not have used the article *a* in the paragraph respecting God, had he meant to declare simply, absolutely, unequivocally, without limit or qualification a disbelief in God. There can be no rational ground for a doubt of the real meaning of the defendant, when the next clause of the sentence is considered. The words are "Universalists believe in a God which I do not; but believe that *their* God." This clearly shows, that the words "a God," and the words "their God" are used in the same limited sense, and that the object was to define and distinguish the God or creed of the Universalists, as a particular faith, from which the writer dissented. Had his intention been otherwise the article *a* would have been omitted in the first clause of the sentence, and the word *their* in the second, and the sentence would have been thus framed "Universalists, believe in God, which I do not, but believe that their god," &c.

Gentlemen, the author of this prosecution has fallen into a grammatical blunder, in his understanding of this sentence, and the Grand Jury have adopted the same mis-construction, in supposing, that the defendant, had expressed a disbelief in God, whereas he has only expressed his disbelief in a God," a particular God or creed, using the word God in the sense of creed or belief, as it is often used. If the wise author of this prosecution, and the enlightened Grand Jury, who have brought the prisoner to the bar to answer before you, have fallen into an error of grammar, a thing so easily avoided, may not some indulgence, some christian charity, be extended by you to the unfortunate errors and delusions, into which the defendant has fallen in his contemplations, upon the abstruse and vast subject of religion, in relation to which there are so many various opinions and doctrines, and consequently such a multitude of errors. You Gentlemen I hope, will not by your verdict expose this aged man to be set upon the gallows between the heavens and the earth, an object for the gaze and the scorn of mankind, even for the most unfortunate errors of opinion, where the wisest sees but through a glass darkly.

His Honor Judge Thatcher here said to the Counsel. You say the defendant disclaims the intention of denying the existence of God, and that he only declares his disbelief in the God the Universalists believe in ; but is not the same God the Universalists believe in, the God of all? I am afraid his denial goes farther.

Mr. Dunlap. I do not anticipate any other construction from the Court, but I am now arguing to the Jury, on a matter of fact, and your Honor knows, that if there be any reasonable doubt, the rules of law require that he shall have the benefit of it, and that construction is to be given, which is most favorable to the prisoner. Gentlemen, this question respecting the meaning of this sentence, is purely a matter of fact, and exclusively for your consideration. The Judge's right and duty is to pronounce his opinion on the law to the Jury, who in criminal cases have also the right to decide the law and must finally settle, when a general verdict is returned both the law and the fact. But with the decision of the facts, the Court have no concern, it is exclusively the province of the Jury. The Judge, I say it respectfully, but firmly and decidedly, has no right to influence your opinion, by his, in matters of fact. You are to judge by the dictates of your own understandings and consciences, guided by the light of mercy.

The defendant in adopting the expression "a god" and

"**their god**" to designate a particular belief, is sustained not only by popular usage, but by some of the highest authorities in Church and State. I shall satisfy you of the correctness of this statement, by an article from the powerful letter of Professor Stuart, of Andover, on Religious Liberty, published in 1830, I shall have frequent occasion to make use of this glorious production, which has all the liberality of the speeches of Mr. Fox, and all the fire and energy of the eloquence of Lord Chatham, the modern Demosthenes. I admire the letter, and its expanded and sound constitutional views of the enlightened author, of whom, though believing in a different faith I shall speak here and every where, in terms of most exalted respect. This letter is an honor not only to its author, but to the country and the age. Professor Stuart says on the twenty-seventh page of his letter.

We limit the meaning to agreement in things, which in our view are essential. Such we do honestly believe to be the difference between Unitarians and ourselves. And such, not a few of the Unitarians themselves have avowed it to be. Mr. Belsham declares that "we do not worship the same God;" and some of your writers and speakers declare, that the God whom we worship is a *devil*. How can you complain, then, that we separate from you? Surely you do not wish to be united in the bonds of communion with such worshippers. If you have any conscience on this subject, it must remonstrate against it.

Again Professor Stuart says on the twenty-third page of this letter.

I know of nothing in any recent Orthodox publications, which can well compare with the reiterated charges against us by Unitarians, from the pulpit and the press, of bigotry, of gloomy superstition, of dark and fraudulent designs on the religious liberties of our country, of worshipping a God who is a tyrant, of propagating horrible and blasphemous ideas of the Divinity, of worshipping a God who is no better than the devil.

Does Professor Stuart make an unfounded charge? He quotes the Rev. Mr. Belsham, the great champion of the Unitarian faith in England. He refers to the current publications of the day in support of this statement. He might have referred to Dean Swift and to Jefferson to show, that the Divines of the Church of England, and that great defender of Unitarianism, speak of the God of the Orthodox, as a different

God from him, whom they worship. Dean Swift says in his Tale of a Tub "Jack" by whom he means the great reformer John Calvin "introduced a new Deity who has since met with a vast number of worshippers." President Jefferson in a letter to President John Adams, dated April 11, 1823, thus expresses himself.

I can never join Calvin in addressing *his* God. He was indeed an atheist, which I can never be; or rather his religion was dæmonism. If ever man worshipped a false God, he did. The being described in his five points, is not the God whom you and I acknowledge and adore, the Creator and benevolent Governor of the world; but a dæmon of malignant spirit.

Here then we find Mr. Belsham, President Jefferson speaking for himself, and the venerable President John Adams, to say nothing of the pamphleteers and sermonisers of the day, referred to by Professor Stuart, proving the correctness of the assertion in the Professor's letter, that the Unitarians declare that they do not worship the same God as the Orthodox, and that some affirm that the God whom the Orthodox worship is "a Devil." There is no escape. "Here is the proof on the spot, before you, read and addressed to your hearing and understanding, to prove that in religious controversies, the word God, is often used as synonymous with creed and belief by minds of the first order of talents, of the most improved cultivation, and of the greatest authority among men. The position then is established that it is a common mode of discourse and writing, to deny a belief in a God, the object of the worship of opponents, intending merely to deny a belief in their creed or religious faith. This was all which the defendant did, when he said "The Universalists believe in a god which I do not," and he is sustained in the mode of expression, by the authority of some of the greatest names in history. He has but followed, where the greatest men have led the way, and an unfavorable construction cannot be given to his expressions, without violating the dictates of reason, the rules of grammar, and the rules of law, which require, that the turn of the scale should always be given to the prisoner.

Permit me before leaving this part of the case, to enquire, is this kind of language to which I have alluded, and which has been quoted, the privileged monopoly of the eminent churchman and the great philosopher? If it be not so, then the prisoner has as clear a right to use it, as Swift, Belsham, Jefferson, and the other writers referred to by Professor Stuart. Are

the publishers of the correspondence of the apostle of liberty indicted? Yet Jefferson says to his illustrious friend Adams, the God in whom the Calvinists believe, "is not the God whom you and I acknowledge and adore." What more has the defendant done, than use a similarity of expression, respecting the creed of the Universalists? He says "Universalists believe in a god which I do not; but believe that their god," &c. "is a chimera." Jefferson says, not that the God in whom the Calvinists believe is a "chimera," but "a demon of malignant spirit." Does he not deny the God of the Calvinists, as much as the defendant the God of the Universalists? Yet Jefferson so far from professing atheism in that denial considered himself denouncing it. If a prosecution should be instituted against the publishers of Jefferson's letters, for blasphemy, in any part of our country, even here where that great and good man has been so vilely misrepresented and calumniated, from the pulpit and by the press, it would be crushed by the power of public opinion, which sooner or later will crush all such proceedings, as the present ill-starred prosecution. Gentlemen. Is this style of waging religious controversy to be allowed, to one class of writers, those of high rank, and interdicted to another class, those of inferior reputation. This is not the correct doctrines in the Republic of Letters, or in the political Republic. Is honor to be given to one man for a mode of attack upon his opponents, for which the defendant is to be consigned to the dungeon, the pillory and the gal-lows?

Gentlemen, I have said the prisoner does not admit himself, to be an atheist, and he repels the charge.

His Honor Judge Thacher here interrupted the counsel, and said.

"But what is his God? If the defendant disclaims atheism, he must believe in some God, and I should like to know, what the God is that he believes in.

Mr. Dunlap. That is an affair between him and God, not between him and your Honor. He does not consider that he is bound to make a confession of faith here, before this earthly tribunal, or that the court has a right to require of him, a disclosure of his religious opinions. He is before a common Law Court, and not before the Inquisition, and will not submit to interrogatories respecting his creed. He is brought here on a charge. It is sufficient for him to defend himself against that charge, without being compelled to state what is his religious belief, for which he is accountable only to God.

Judge Thacher. But the defendant is now before a human tribunal, and we must know what he does believe in this particular, in order to judge, whether he does or does not believe in any God.

Mr. Dunlap. I am arguing this cause to the Jury on a matter of fact, and here again respectfully, but solemnly protest against the Jury's being influenced in any matter of fact, by the opinion of the Court. Were it otherwise the Jury trial would be a mockery, and not the bulwark of the liberty of the people.

Gentlemen. The remaining part of the article complained of, and now under examination, contains a statement of the defendant's disbelief in the miracles, and the christian doctrine of the resurrection of the dead. This is written, as indeed is the whole of the editorial article, (the only matter composed by the defendant, which is the subject of the prosecution) with calmness. There is no ground of complaint, against the manner, the objections urged must be to the matter, and doctrines of this article. There is no violence, no levity, no coarseness. All is moderation and apparent sincerity. Now an attack upon a profession of belief in the doctrines of christianity, as I contend, is not blasphemy, within the Statute. The Statute defines in what blasphemy shall consist. The blasphemy must be wilfully denying God, cursing or contumeliously reproaching God, his creation, government and final judging of the world, cursing or reproaching Jesus Christ or the Holy Ghost, or cursing or contumeliously reproaching the Holy Scriptures, by exposing them or any part of them, to contempt and ridicule. Expressing a disbelief in the miracles, and in the Christian doctrine of the resurrection, is none of these things described in the Statute. It is not denying God. It is not cursing nor contumeliously reproaching God, his creation, government and final judging of the world; for if professing a disbelief in the resurrection, be denying God's final judging of the world, it is not a contumeliously reproaching that final judging of the world. It is not a cursing or reproaching Jesus Christ, or the Holy Ghost. It is not a cursing nor contumeliously reproaching the Holy Scriptures, by exposing them or any part of them to contempt and ridicule. If the doctrine advanced, or the disbelief professed by the defendant, be contrary to the doctrines and belief contained in the Scriptures, yet there is no cursing nor contumeliously reproaching any person or thing, as is required to bring a case within the Statute against blasphemy. A simple denial of God is within the Statute. But in all other cases, there must

be more than a denial, there must be a cursing or contumeliously reproaching of the persons or things described in the law, to bring a case within the purview, and operation of the Statute.

Gentlemen. It cannot be contended that because doctrines are denied, which the Court and Jury may believe to be contained in the Scriptures, therefore the Holy Scriptures are exposed to contempt and ridicule, and the Statute against blasphemy is violated. This would be putting an enormous strain upon this penal statute, and the consequences would be in the highest degree alarming. No man would be safe whose opinions in religion might be at variance, with those who might happen at the time, to occupy the seats of the Court, and the Jury. What chance would a Unitarian stand for an acquittal, with an Orthodox Court and Jury? If such a doctrine be sound, the Orthodox Court and Jury would be bound by their oaths and consciences, to convict the Unitarian, who should profess his belief, of blasphemy, for the Orthodox do not consider the Unitarian doctrines to be the doctrine of the Scriptures. And if maintaining a doctrine contrary to the doctrine of the Scriptures, be an offence within the Statute, it is impossible that an Unitarian maintaining his sincere opinions could escape a conviction for blasphemy, when tried by an Orthodox Court and Jury. In the same way, and upon the same principles, the Orthodox believer maintaining his sincere opinions, would be in danger of conviction of blasphemy, by a Unitarian Court and Jury, for the Unitarians hold that the Orthodox faith is not the Scripture faith delivered to the Saints. Thus the Trinitarians in possession of the Judiciary, might convict the Unitarian of blasphemy, and the Unitarian in turn, when they should hold the Judicial power, might retort upon their adversaries. And one sect after another, of the hundreds and perhaps thousands into which Christians are divided, might tyrannize over their opponents, and convict them of blasphemy, and all this under the same statute. That which might be considered the true doctrine one day, would be the next adjudged blasphemy, according to the changing success of various religious parties, obtaining one after another, the political power of the State, and the means of oppressing their adversaries. The doctrine that expresses a disbelief of what the Court and Jury may consider the true Scripture faith, is exposing the Holy Scriptures to contempt and ridicule, and therefore blasphemy leads inevitably to the alarming conclusion, that every expression of disbelief in the prevailing religious opinion is blasphemy. This would destroy

all freedom of conscience, and render the minority the slaves or victims of the majority, in a matter, in which every man feels it his right and duty, to bear witness of the faith that is in him.

Gentlemen. For the purposes of the argument, let us for a moment admit, the position to be correct, that an expression of disbelief in what the Court and Jury may consider to be the Scripture doctrine, is exposing the Holy Scriptures, to contempt and ridicule, and consequently is blasphemy by the Statute. Let us now suppose a Roman Catholic Jury in your places and a Protestant arraigned before them, and on trial, for denying the real presence, the actual mysterious existence of the body and blood of Jesus Christ, in the Holy Sacrifice of the Mass, of the Roman Catholic Church. Must not a pious Catholic Jury according to this doctrine, following the dictates of their consciences, and the obligations of their oaths, convict the Protestant of blasphemy? The Catholics in this country were the earliest proclaimers of the principles of universal toleration, and I feel assured from my knowledge of their character, they would go as far as any Christians in the United States, in defence of the cause of religious freedom. But they could not in the case avoid convicting the Protestant, for he has denied and contemned what in their opinion, is a truth expressed in the most plain, and clear manner in the Holy Scriptures. Now look on another picture. Suppose a Roman Catholic on trial before a Protestant Jury, for asserting the doctrine of the real presence. By the same reasoning and under the same Statute, he must be convicted by the Protestant Court and Jury, for maintaining a doctrine, which they do not believe to be contained in, and consider contrary to the Holy Scriptures. Carry this matter a little further, and by the same kind of reasoning, by which it is attempted in this indictment to bring the defendant's case, within the Statute, every prevailing denomination having the Court and Jury of their persuasion, may oppress, persecute, convict as blasphemers, and condemn to the dungeon, the pillory, and the gallows, all who dare to differ from them in opinion.

Do not the Unitarians accuse the Orthodox of blaspheming God? What says Mr. Jefferson, a zealous Unitarian, who expresses in one of his latest letters, the hope, that every young man in the United States will die an Unitarian? What said the Republican Patriarch almost with his latest breath? He accuses, in the letter, which has been before referred to, Calvin of "blaspheming" God. Blaspheme is the word he uses. What says Dr. Channing? He accuses the Orthodox of

"calumniating" God. Calumniating is the word used by this distinguished divine, which is the same thing as "contumeliously reproaching," the words used in the Statute against Blasphemy. The following is an extract from Dr. Channing's sermon preached at New York, December 7, 1826.

Suppose then, that a teacher should come among you, and should tell you, that the Creator, in order to pardon his own children, had erected a gallows in the centre of the universe, and had publicly executed upon it, in room of the offenders, an Infinite Being, the partaker of his own Supreme Divinity; suppose him to declare, that this execution was appointed, as a most conspicuous and terrible manifestation of God's justice and wrath and of the infinite wo denounced by his law; and suppose him to add that all beings in Heaven and earth are required to fix their eyes on this fearful sight, as the most powerful enforcement of obedience and virtue. Would you not tell him, that he CALUMNIATED his maker? Would you not say to him, that this central gallows threw gloom over the universe: that the spirit of a government, whose very acts of pardon were written in such blood, was terror, not paternal love; and that obedience, which needed to be upheld by this horrid spectacle, was nothing worth? Would you not say to him, that even you, in this infancy and imperfection of your being, were capable of being wrought upon by nobler motives, and of hating sin through more generous views; and that much more the angels, those pure flames of love, need not the gallows and an executed God, to confirm their loyalty? You would all so feel at such teaching as I have supposed; and yet how does this differ from the popular doctrine of atonement? According to this doctrine, we have an Infinite Being sentenced to suffer as a substitute the death of the cross, a punishment more ignominious and agonizing than the gallows, a punishment reserved for slaves and the vilest malefactors; and he suffers this punishment, that he may show forth the terrors of God's laws, and strike a dread of sin through the universe. I am indeed aware that multitudes who profess this doctrine, are not accustomed to bring it to their minds distinctly in this light; that they do not ordinarily regard the death of Christ as a criminal execution, as an infinitely dreadful infliction of justice, as intended to show, that, without an infinite satisfaction, they must hope nothing from God. Their minds turn by a generous instinct from these appalling views to the love, the disinterestedness, the moral grandeur and beauty of the sufferer; and through such thoughts they make the cross a source of peace, gratitude, love, and hope; thus affording a delightful exemplification of the power of the human mind to attach itself to what is good and purifying in the most irrational system. But let none on this account say, that we misrepresent the doctrine of atonement, the primary

and essential idea of which is, *the public execution of a God*, for the purpose of satisfying justice and awakening a shuddering dread of sin.

In the above extract Dr. Channing charges the preachers of the doctrine of the atonement, with "calumniating" God. If this be correct, they are guilty of blasphemy by the Statute on which the defendant is indicted. Suppose the eloquent Professor Stuart, the author of the noble letter on Religious Liberty, to be indicted for this offence for preaching the doctrine of the atonement, handed down to him from his Pilgrim Fathers, and the author of this sermon to be his Judge. Must he not be convicted of calumniating God by that Judge? Calumniating God is contumeliously reproaching God, and this is the very offence described in the Statute. Again, suppose the learned author of this sermon to be indicted for blasphemy for denying the doctrine of the atonement, and Professor Stuart to be the Judge. All his sincerity and learning could not save him, if professing a disbelief of what the Court might deem to be the doctrine of the Holy Scriptures, be an offence against the Statute. There seems to be a dilemma here, from which it is difficult to escape: Either Dr. Channing is right or he is wrong. If he is right, then the preachers of the doctrine of the atonement are in peril of this law. If he is wrong, then he is in peril himself, for denying and attacking that doctrine. You see the fatal absurdities and dangers, into which this unfortunate prosecution is leading us, the farther we advance; and we are now, but on the threshold of the defence.

Gentlemen. Before leaving the consideration of the facts of this case, and entering on the vast field of legal and Constitutional ground which opens before us, let us pause and review that over which we have already travelled. You will recollect with relation to the first article, that it is contended, as a matter of fact, that it was published without the authority of the defendant, and in his absence from the city, and contrary to the established regulations of his printing office. It has been asked by the Court, why he has not disavowed it. The answer is a plain one, the question is not whether he has retracted, but whether he has committed any offence. But he was not bound to disclose his defence till he came here. He was not bound to disclose, nor has he disclosed, nor will he disclose, the name of the young man, who inadvertently published in the Investigator, the article complained of, and

light up the faggot to destroy him. When this trial shall be finished, Mr. Kneeland will publish his decided condemnation of that article, and his regret, that it found its way into his newspaper. It has therefore been contended that morally and legally the defendant is not responsible for the publication. It is also contended, that the article, even were he legally responsible, is not a violation of the letter of this penal Statute against blasphemy.

You will recollect with respect to the second article, the subject of the Indictment, that it has been contended, that it was no more than the first within the letter of this Statute, however exceptionable its character.

You will recollect with respect to the third article complained of in the Indictment, that it has been contended, that there is no denial of any doctrine, no cursing, no contumeliously reproaching of any person or thing; but a calm profession in mild terms of a mere disbelief in the creed of the Universalists; in the Divinity of Jesus Christ, in the miracles, and the Christian doctrine of the resurrection. I now leave and joyfully leave the facts, and doctrinal parts of this case, and approach the ground, which I know better, and can tread with a bolder step, the law and the Constitution.

Gentlemen of the Jury. The first position of law, which I assume is, that the Jury are the final judges of the law, of every criminal case, where a general verdict of guilty or not guilty is returned. The Jury may render a special verdict returning the facts of the case, and referring the responsibility of the decision of the law arising upon those facts to the Court. But a general verdict necessarily includes a decision of the law, as well as of the facts, and the responsibility is on the Jury. By a verdict of guilty you declare, that the facts, alleged in the Indictment, are proved, that they are contrary to the statute on which the prosecution is founded, and that the statute is a Constitutional law of the land. You cannot avoid the decision of the law questions when a general verdict is returned. You cannot conscientiously shelter yourselves from responsibility, in giving a general verdict against your own judgment, by yielding up that judgment, to the authority of the opinion of the Court. You are bound to listen with respect to the instructions you may receive from the Bench, but after all your own consciences must be your guides, and upon you rests the final responsibility. You have no right to surrender your own honest convictions to any authority. This is the doctrine of the criminal law, and by it you should be govern-

ed. The Court have a right to give you their views of the law, but the Court has no power to compel you to adopt their views. Why are you called from the ranks of the people to take a part in judicial proceedings? Is it not to guard the people's rights from violation? Else the whole business of administering justice would be transacted by the Court, without the intervention of a Jury. If there ever was a case, in which a Jury should independently and firmly maintain their right, to decide the law in a criminal case, it is a case like the present, where are drawn in question the most important constitutional privileges, relative to the freedom of speech, the liberty of the press, and the rights of conscience. The people are good judges, and the proper guardians of the Constitution. It is the people's law, made by the people, for the protection of the people, and as a bridle upon Legislative and Judicial usurpations and tyranny, and it must be maintained by the people, not only at the ballot box, but also in the Jury box. The defendant looks to you to vindicate the principles of religious liberty, and the rights of conscience, and to maintain in this cause, his constitutional rights. His rights did I say? Not only his, but those of yourselves, and your fellow citizens throughout this Commonwealth.

Gentlemen. The next position, which I shall attempt to confirm, will be that which has been repeatedly assumed, in relation to the construction to be given to a penal statute. A penal statute must be construed with strictness. A case must be clearly, and without putting a strain upon the words, brought within the letter of a penal statute, to be within its operation. It is not sufficient that the acts proved, are considered to be as bad, or even worse in their tendency, than those prohibited in the law. They must be the very acts described and prohibited by the language of the statute, giving that language not an enlarged construction to embrace the case, but a strict limited construction in favor of the accused. In every case of a prosecution founded on a penal statute, the question is, whether the offence charged, be the precise offence described in the written law, and if the defendant's case be not within the very letter, he must be acquitted. This position is sustained, by the mild and humane principles of criminal jurisprudence, by which our Courts and Juries profess to be guided. It is sustained by the highest authorities in the law, I refer to the authority of the great names of Bacon and Blackstone. Lord Bacon thus informs us in his *MAXIMS OF THE LAW*.

As it is a rule that penal statutes shall not be taken by equity, and the statute of 1 Ed. VI. enacts that those that are attained for stealing of horses shall not have their clergy, the judges conceived, that this did not extend to him that should steal but one horse, and therefore procured a new act for it in 2 Ed. VI. cap. 33. And they had reason for it, as I take the law; for it is not like the case upon the statute of *Glocest.* that gives the action of waste against him that holds *pro termino vite vel annorum*. It is true, that if a man holds but for a year he is within the statute; for it is to be noted, that penal statutes are taken strictly and literally only in the point of defining and setting down the fact and the punishment, and in those clauses that do concern them, and not generally in words that are but circumstances and conveyance in the putting of the case, and to see the diversity; for if the law be, that for such an offence a man shall lose his right hand, and the offender hath had his right hand before cut off in the wars, he shall not lose his left hand, but the crime shall rather pass without the punishment which the law assigned, than the letter of the law should be extended; but if the statute of 1 Ed. VI. had been, that he that should steal one horse should be ousted of his clergy, then there had been no question at all, but if a man had stolen more horses than one, but that he had been within the statute, *quia omne majus continet in se minus*.

You see that this doctrine was anciently pushed to the extreme extent of causing the acquittal of a person, who had stolen one horse, and was indicted on the statute relating to the stealing of horses. In modern times a more rational construction has been given in a similar case, and a party who had stolen one bank note, was holden to have violated the statute, prohibiting the stealing of bank notes. Sir William Blackstone fully confirms in his Commentaries the principles proclaimed by the renowned lawyer, statesman, and philosopher, Lord Bacon.

PENAL statutes must be construed strictly. Thus the statute 1 Edw. VI. c. 12. having enacted that those who are convicted of stealing *horses* should not have the benefit of clergy, the judges conceived that this did not extend to him that should steal but one *horse*,* and therefore procured a new act for that purpose in

* Lord Hale thinks, that the scruple of the judges did not merely depend upon the words being in the plural number, because no doubt had ever occurred respecting former statutes in the plural number; as, for instance, it was enacted by the 32 Hen. VIII. c. 1, that no person convicted of burning *any dwelling houses* should be admitted to clergy. But the reason of the difficulty in this case was, because the statute of 37 Hen. VIII. c. 8. was expressly penned in the singular number; *If any man do steal any horse, mare, or filly*: and then this statute thus varying the number, and at the

the following year. And to come nearer our own times, by the statute 14 Geo. II. c. 6. stealing sheep, *or other cattle*, was made felony without benefit of clergy. But these general words, "*or other cattle*," being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And therefore, in the next sessions, it was found necessary to make another statute, 15 Geo. II. c. 34. extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs by name.

STATUTES against frauds* are to be liberally and beneficially expounded. This may seem a contradiction to the last rule; most statutes against frauds being in their consequences penal. But this difference is here to be taken; where the statute acts upon the offender, and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly: but when the statute acts upon the offence, by setting aside the fraudulent transaction,† here it is to be construed liberally.

same time expressly repealing all other exclusions of clergy introduced since the beginning of the reign of Hen. VIII. it raised a doubt, whether it were not intended by the legislature to restore clergy where only one horse was stolen, 2 H. P. C. 365. And it has since been decided that where statutes use the plural number, a single instance in such cases will be comprehended; as the statute 2 Geo. II. c. 25 s. 3. enacts, that it shall be felony to steal *any bank notes*, and has been adjudged to be felony to steal one bank note. *Leach* 1. *Hassel's Case*.

* These are generally called remedial statutes. And it is a fundamental rule of construction, that penal statutes shall be construed strictly, and remedial statutes shall be construed liberally. It is one of the laws of the twelve tables of Rome, that whenever there was a question between liberty and slavery, the presumption should be on the side of liberty. This excellent principle our law has adopted in the construction of penal statutes: for whenever any ambiguity arises in a statute introducing a new penalty or punishment, the decision shall be on the side of lenity and mercy; or in favor of natural right and liberty: or, in other words the decision shall be according to the strict letter in favor of the subject. And though the judges in such cases may frequently raise and solve difficulties contrary to the intention of the legislature, yet no further inconvenience can result, than that the law remains as it was before the statute. And it is more consonant to principles of liberty, that the judge should acquit whom the legislature intended to punish, than that he should punish whom the legislature intended to discharge with impunity. But remedial statutes must be construed according to the spirit: for in giving relief against fraud, or in the furtherance and extension of natural right and justice, the judge may safely go even beyond that which existed in the minds of those who framed the law.

† And therefore it has been held, that the same words in a statute will bear different interpretations according to the nature of the suit or prosecution instituted upon them. As by the 9 Ann. c. 14. the statute against gaming; if any person shall lose at any time or sitting 10*l.* and shall pay it to the winner, he may recover it back within three months; and if the loser does not within that time, any other person may sue for it, and treble the value besides. So where an action was brought to recover back fourteen guineas, which had been won and paid after a continuance at play, except an interruption during dinner, the court held the statute was remedial, as far as it prevented the effects of gaming, without inflicting a penalty,

How strong is the illustration of this maxim, that a penal statute is to be construed strictly, in the case, where precisely opposite constructions were given, to the same words in the same statute, according as the object and effect of the suit, were to operate on the offence, or upon the offender. In the one case, the liberal construction was applied, when the object of the suit was to operate on the offence, and recover back the money lost at gaming. In the other, when the object was to operate on the offender and punish him, the strict construction was applied. You see the extreme caution, with which enlightened Courts, construe a penal statute. Apply the principles of construction to the articles complained of in the present indictment, and not one of them will be found within the letter of the Statute against Blasphemy, on which the prisoner is indicted.

The learned Counsel for the Commonwealth stated in his opening address, that the degrading punishments prescribed in the Statute against Blasphemy have been abolished. He is mistaken. The Court still hold the power, in case the prisoner shall be convicted, to fasten him to the pillory, and set him on the gallows; a fine spectacle to be exhibited in State Street, in order to shew the people of Massachusetts and the United States, how gloriously we carry out in Boston, the principle of our Constitution, that no person shall be hurt, molested or restrained in his person, liberty or estate, for his religious profession or sentiments.

Judge Thacher here observed, that law is repealed, and there is no such punishment in this Commonwealth. The act of 1812, chap. 134, abolished such punishments.

Mr. Dunlap. We will examine this matter a little, and we shall soon see, whether I am right or wrong. I have not come to the argument of this cause, without having endeavored to understand the law of it, and I know that I am right, and will read the statutes and prove it. The Statute against Blasphemy on which the indictment rests, contains these words.

AN ACT AGAINST BLASPHEMY.

BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That if any

and therefore, in this action, they considered it one time or sitting; but they said, if an action had been brought by a common informer for the penalty, they would have construed it strictly in favor of the defendant, and would have held, that the money had been lost at two sittings. 2 Bl. Rep. 1236.

person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government or final judging of the world, or by cursing, or reproaching Jesus Christ, or the Holy Ghost, or by cursing or contumeliously reproaching the Holy Word of God, that is, the canonical scriptures, contained in the books of the Old and New Testaments, or by exposing them, or any part of them, to contempt and ridicule; which books are as follows: Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, the Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelations; every person so offending shall be punished by imprisonment not exceeding twelve months, by sitting in the pillory, by whipping, or by sitting on the gallows, with a rope about the neck, or binding to the good behavior, at the discretion of the Supreme Judicial Court before whom the conviction may be, according to the aggravation of the offence.

The act of 1812, chapter 134, is as follows.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever any person or persons shall or may be prosecuted to conviction before the Supreme Judicial Court of this Commonwealth, for any crime or misdemeanor, which is now by law punishable by whipping, standing in the pillory, sitting on the gallows, or imprisonment in the common goal of the county, such court may, at their discretion, in cases not already provided for, in lieu of the punishments aforesaid, order and sentence such convict or convicts to suffer solitary imprisonment, for a term not exceeding three months, and to be confined to hard labour, for a term not exceeding five years, according to the aggravation of the offence. [Feb. 27, 1813.]

The act of 1826, chapter 105, to which the Sheriff has called the attention of the Court, is as follows.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person, convicted of any offence, before any court of this Commonwealth, shall ever be punished by whipping; but the court, having

jurisdiction of the case, may, and shall, sentence such convict to a fine, to the use of the Commonwealth, not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, according to the aggravation of said offence.

Thus you see Gentlemen that I was correct. The punishment of whipping only is abolished in this Commonwealth. In relation to the punishments of standing in the pillory, and sitting on the gallows, the Court "may at their discretion" order different punishments "in lieu of the punishments aforesaid." But the Court at their discretion may not substitute other punishments, and may in case of a conviction, sentence the defendant to standing in the pillory, and sitting on the gallows. The whole of the punishments prescribed in the statute, except in relation to the whipping, is completely at the discretion of the Court. The whipping post alone is taken out of the Statute against Blasphemy. The pillory and the gallows stand there in all their former terrors. I readily admit, that I do not expect in case the defendant shall be convicted, that he will be sentenced to the punishments of standing in the pillory and sitting on the gallows. It would be making too hazardous an experiment at the present day of the strength of a penal statute respecting religion, and would rouse public indignation against both the punishment and the prosecution. The public sentiment in our country is decidedly against such horrid spectacles, even when men have committed, the most dangerous and wicked acts, and least of all would such punishments be endured in a case like the present, for errors of opinion in matter of faith. But let the spirit of religious fanaticism and persecution rage. Let such prosecutions as the present be encouraged and become frequent. Public sentiment would soon become depraved. Humanity and toleration would soon become extinguished in the breasts of men. The most cruel punishments would be resorted to, by those who might sincerely believe that they were advancing the cause of human happiness, and the glory of God, by immolating those who might differ from them in opinion. Let the influence of liberal and enlightened views be destroyed, and bigoted and intolerant opinions prevail, and you will soon find the Statute against Blasphemy in full operation, and the barbarous punishments of an iron age revived. Narrow minded Judges may be placed on the Bench. Sectarian feelings may furiously rage with Juries. Unjust prosecutions may be instituted, and unrighteous convictions obtained. Cruel and disgraceful punishments may be

inflicted, more discreditable to those, who inflict, than those who suffer them, and all the ancient glories of the pillory and the gallows, the rack and the stake, as engines of religious conversion, may be restored.

Gentlemen of the Jury. Let us now resume our track, and return to the Statute against Blasphemy, which must be closely and carefully examined, if there be a desire to give the defendant a fair trial, and to do justice in this cause. I shall contend upon general principles relative to human legislation, that the Statute cannot be enforced by jurymen, without renouncing their reason or abandoning their consciences. The Legislature has attempted to legislate on a subject too vast for their understandings to comprehend; and altogether, beyond human jurisdiction. It is a law upon an infinite subject, and therefore beyond the grasp of finite faculties. It seems either the height of human presumption, or the lowest degree of human folly, for a legislature to attempt to make laws on a subject immeasurably beyond their reach. No human intellect can comprehend, no human language define it. Man adores, but he cannot find out God. Doth not the Scripture say "canst thou by searching find out God; canst thou find out the Almighty unto perfection"? Even the ideas, which his mind can conceive, he cannot express by words, "the daughters of earth," mere imperfect human inventions. Shall a worm of the dust, dare to legislate upon such a subject, as the Great Creator of the vast Universe, when he cannot clearly understand even the ideas which crowd upon his own mind, and accurately express even his own conceptions? In what sense did the Legislature use the word God in this Statute? If it cannot be ascertained, then the law is unintelligible, and cannot be enforced, for promulgation is essential to the validity of a law. That cannot be promulgated or made known, to those who are required to obey, which the law giver himself did not know or understand. If the Legislature had no distinct ideas on this subject, or have not used words in an intelligible manner, then they could not make and have not made their law known to others, and consequently their declaration is no law, and their ordinance cannot be, has not been promulgated, and is destitute of validity. In what sense I again ask did the Legislature use the word God in this Statute. An illustration will show you the difficulty in which an attempt to legislate upon such a subject, must be involved. I will suppose a learned Pundit from the Courts of the East Indies, and a holy Bramin from the temples of Hindostan, and a Chinese philosopher to arrive in this land of

freedom. The Pundit is a learned lawyer of the Gentoo Courts; that eminent Judge and scholar Sir William Jones describes the Pundits as the most acute and subtle jurisprudents, and accomplished in all the learning of the East, and he found himself obliged to learn the Hindoo language to render himself a match for them. The strangers come to seek the protection of our free institutions, and to become citizens of our Republic, pursuant to the laws and Constitution of the United States. Those laws and that glorious Constitution only require the qualifications of residence for a fixed period, a good moral character, an attachment to the principles of the Constitution of the United States, and a renouncement of all titles of nobility and all foreign allegiance. They bring with them, like Rachel the wife of Jacob and the mother of Joseph and Benjamin, the Gods of their native countries, become naturalized, openly profess their respective creeds, adore their Gods and deny all other Gods. The Chinese erects altars and places upon them the images of the Gods of his worship, offers up the incense of his adoration and denies every other God. Let the Bramin stand before us, clad in his sacerdotal vestments of dazzling whiteness, and he would excite as much admiration, as did the holy priests of Brama visiting the camp of Alexander, when the ancient conqueror of the world pitched his tent on the bank of the Ganges. This priest of Brama pours forth his adoration to the God or Gods of his religion, and denies the God of every other worship. Do the Pundit, the Chinese and the Bramin, deny God within the meaning of this law, and violate the Statute against Blasphemy? I care not in which way this question may be answered. Answered it must be, one way or the other, either in the affirmative or negative, and an answer either way will involve us in all the mazes of confusion and uncertainty, and lead us into a labyrinth, from which the makers of this Statute can furnish no clue by which we can be extricated.

It will demonstrate that this subject is one in which human legislatures and human tribunals cannot move a step, without plunging themselves into an abyss of darkness and confusion.

The answer to my question, which we are considering is, that God is not denied, and this Statute, against Blasphemy is not violated. Upon what ground must this answer be given? It must be upon this ground and none other, that the word God is used in the Statute in a general sense. If so, it includes all the various Gods, which are the objects of human belief and worship. Follow me a little further, in tracing the consequences of this answer. The moment this ground shall

be assumed, and the Hindoo Lawyer and Priest, and the Chinese considered not to have broken the Statute, and the word God in the Statute shall be understood in a general sense, then the heathen idolatry will be as much protected by this Statute, as the belief of the true God, the God of Abraham and Isaac and Jacob, and Jesus Christ. The idolater may call upon this Court and Jury to enforce this Statute, against those who deny his Gods, as well as the believer in the true God call upon you to inflict the penalties of this law upon the prisoner at the bar. The Statute therefore when examined in this point of view, is found to be a law for the protection of idolatry. It would have better served for a decree to have been enrolled in the Pantheon of Rome, the Temple of the Gods of all nations, and never should have been promulgated from the Halls of the State House of a Christian people.

Let us now suppose the answer to my question to be the other way, in the affirmative, that the Pundit, the Bramin, and the Chinese deny God, and violate the Statute against Blasphemy. Let us examine and trace out the consequences of this answer to the enquiry whether the Statute be broken. We shall soon find ourselves as deeply involved in inextricable confusion, as we were by the answer in the negative to that question. It must be assumed that they have denied God, because they have denied the true God—the God of Abraham and Isaac and Jacob,—and Jesus Christ. Yet these persons who have broken this Statute against Blasphemy, because they deny God, are allowed to be sworn as witnesses in our courts of justice, because they believe in God. The profession of their belief subjects them, to be placed at the bar as criminals, and the profession of the same belief also entitles them to be admitted to the stand as competent witnesses. Is not this the law? The law books furnish us with ample information on this point. Phillips in his Law of Evidence, lays down the law in the following manner.

Lord Coke, indeed, says generally, that an *infidel* cannot be a witness, in which denomination he intended to comprise Jews as well as Heathens: and Mr. Serjeant Hawkins thought it a sufficient objection to the competency of a witness, that he believed neither the Old nor the New Testament. Lord Hale, however, was of a different opinion, and strongly points out the unreasonableness of excluding indiscriminately all Heathens from giving evidence, as well as the inconsistency of compelling them to swear in a form which they may possibly not consider binding. "It were a very hard case, he says, if a murder, committed here in

presence only of a Turk or a Jew, should be dispunishable, because such an oath should not be taken, which the witness holds binding, and cannot swear otherwise, and possibly might think himself under no obligation, if sworn according to the usual style of the courts of England." All doubts upon this subject, however, are now removed. In the case of Omichund and Barker, (which came before Lord Chancellor Hardwicke, assisted by Lee, C. J. Willes, C. J. and Parker, C. B.) it was solemnly decided, that the depositions of witnesses professing the Gentoo religion, who had been sworn according to the ceremonies of their religion under a commission out of Chancery, ought to be admitted in evidence. And it may now be considered as an established rule, that infidels of any other country, who believe in a God, the avenger of falsehood, ought to be received here as witnesses.

The law on this subject has thus been established in the United States.

And every person who believes in the obligation of an oath, whatever may be his religious creed, whether *Christian*, *Mahomedan*, or *Pagan*, or whether he disbelieves them all, is an admissible witness; and may testify in a court of justice, being sworn according to that form of oath, which, according to his creed, he holds to be obligatory. *Curtiss v. Strong*, 4 Day, 51. S. C. *Swift's Ev.* 48.

Gentlemen. Are we in light, or in darkness and confusion worse confounded? The Bramin of a spotless life, an example of earthly purity, comes upon the stand to testify as a witness. He is examined respecting his creed. He declares that he believes in the religion of his Bramin fathers, and denies the God of every other religion. He is permitted to testify, and yet may be indicted for blasphemy. The same belief, which qualifies him to be sworn, renders him liable, to be punished. On the stand he is considered to believe in God. In the bar of the criminals he is adjudged to deny God. One day he is admitted as a witness, because he believes in God. The next day he is placed in the pillory or on the gallows, because he denies God. What fatal inconsistencies are there under the same system of laws! What fatal absurdities flow, from human legislation, upon this incomprehensible subject! What an account would the learned Pundit give, in returning to his native country, of the wisdom and justice of the laws of our country, whence we are sending out Missionaries to Hindostan to convert his brethren and countrymen to Christianity? What emotions would the Bramin, returning to his native land, and giving an account of the laws on the subject of religion in this Christian land, excite in the breasts of his

followers! Would the cause of Christianity make much progress, among those followers, when the priest whom they love and venerate, should tell them, that by our Christian laws, a man may be exposed to the most ignominious punishments, for professing a belief, which in solemn proceedings in the courts of justice entitles him to be received as a witness.

Gentlemen. You see the consequences, which result from an answer to my question, in either the affirmative or negative. The slightest examination of this statute confirms the position, which I have attempted to establish, that the subject is one which does not and cannot belong to the consideration or jurisdiction of human legislatures and tribunals. Human legislatures cannot clearly express or carry out their own intentions, for the subject is so extensive, that the moment they enter upon it, they are lost in the vastness of the field which opens to the view. You see here an illustration. If the word God in this statute be used in a general sense, then the flood gates of idolatry are opened, and we are deluged with Pagan superstitions. If it be used in a limited sense, then the belief, which qualifies a man for the stand as a witness, also qualifies him for the bar as a criminal, and for the pillory and the gallows as a convict. While the legislature are prohibiting infidelity, they are protecting idolatry, or else subjecting to infamous punishments, those, whom the law deems worthy of credit, in the most important transactions of this life, the solemn proceedings of courts of justice, in which are involved, the fortunes, the reputation, the liberties and the lives of the citizens.

I will propose another question: Is the word God in the Statute used in the Trinitarian or the Anti-Trinitarian sense? This question like the other, must be answered, yea or nay, in the affirmative or negative. The word God if used in any intelligible sense, must have been used in the Trinitarian or Anti-Trinitarian sense. If in the Anti-Trinitarian sense, then a belief is established by law, which according to the Trinitarian creed is a heresy, and the Trinitarian cannot consistently with the dictates of his conscience, enforce the law. It is an affair in which a conscientious man cannot and dares not temporise. On the other hand if this word be used in the Trinitarian sense, then the conscientious Unitarian cannot enforce the law. No human authority can require in a solemn matter of conscience, a man, to carry into effect a law, which in his belief, sustains a false creed, for in such a case he becomes an accessory to the sin of spreading and sustaining false doctrines, and will not stand

excused in his own conscience. This is not the only mischief: it opens the way to cruel persecutions. If the word God in the Statute be used in the Trinitarian sense, the Trinitarian can rightfully, if the law be valid and constitutional, convict the Unitarians of blasphemy, for denying the God described and intended in the Statute. So on the other hand, if the word God be used in the Statute in the Anti-Trinitarian sense, the Unitarians can rightfully, if the law be valid and Constitutional, convict the Trinitarian of blasphemy, for denying the God described and intended in the Statute. Professor Stuart says that the Reverend Mr. Belsham declares that the Unitarians do not worship the same God with the Orthodox. He says, farther, that in the Unitarian publications, the Orthodox are charged with worshipping the "Devil." Mr. Jefferson says, Calvin "blasphemed" God, and that his God, is not the God, whom he and President Adams worshipped "but a demon of malignant spirit." Dean Swift says Calvin "invented a new Deity." Dr. Channing charges the Orthodox, with calumniating their Maker. Would not the Orthodox before a Unitarian Court and Jury, be in some danger under this law, if the word God in the Statute be used in the Unitarian sense, with all these heavy charges hanging over their heads? Will an Orthodox man on the Jury, if the word God be used in the Statute in the Unitarian sense, sustain by his verdict, a statute, by which he and his friends may be condemned? Can either a rational Unitarian, or a rational Orthodox Christian, consent by his verdict to sustain a law, which Unitarian or Orthodox Courts and Juries, as either religious sect or party may be in power, may construe or pervert to favor their own opinions, and by which they may persecute, oppress and condemn as blasphemers, and consign to the pillory and the gallows, those who dissent from those opinions? If it be uncertain in what sense, Trinitarian or Anti-Trinitarian, the word is used in the Statute, the danger is the greater. Wretched is the servitude and dangerous the condition of the people, when the laws, the penal laws, and particularly on the subject of religion, are uncertain in their character. Then the citizens may be subject, to alternate persecution, according as the various religious parties rise and fall in the struggles to obtain the political power of the State. If the expression be certain, and the law be clearly a Trinitarian or Anti-Trinitarian Statute, then but one portion of the people can suffer, those who do not profess the established creed. But if the expression in the Statute, be uncertain, then each religious party as it obtains power, will construe it according to its pe-

culiar views, and as one after another predominates, persecute its opponents until in the process of time, in the changing course of events, all may in turn be persecuted. The Unitarians, of all others, should avoid enforcing this Statute by their verdict, for if the Statute be any thing, it is, as will be hereafter shown, a Trinitarian law, by which they may be condemned. As a portion of the Christian family, in numbers but a grain of sand to the multitude on the sea shore, weak in the United States, though strong in political influence in this Commonwealth, they should be the last, to excite or sanction such a prosecution as the present. Let the reproach of an intolerant spirit be once fastened on the Unitarians, and their influence and power, even here, will be instantly annihilated. The poisoned chalice of persecution may be commanded to their own lips, and they may be compelled to drink the bitter draught to the dregs. Surely this consideration, that this may be an Anti-Trinitarian Statute, by which Trinitarians may be condemned, or a Trinitarian Statute by which Unitarians may be condemned, or a Statute with uncertain expression a snare for the religious liberties of the people, should rouse the feelings of all friends of religious freedom of every persuasion against it, and induce them to blot it out of the Statute book, and destroy its effects in courts of justice, by rendering it a dead letter. Do not these considerations tend to show, that this Statute is void, by the general principles on which human legislation depends, being upon a subject wholly beyond the limits of legislative power, and a law which never can be sustained by honest conscientious and intelligent juries, in a land of civil and religious liberty? Is not the whole subject of this law, one exclusively between a man and his God, not between the citizen and the Government? If so, every attempt at legislation in relation to this matter, is an arrogant assumption of the prerogatives of Heaven, and a violation of the rights of man.

You perceive how clouds and darkness thicken over this unfortunate prosecution, the more its character is understood, and the more this statute is examined. I have contended that if the Legislature had no distinct ideas on the subject, or have not used intelligible expressions to communicate their ideas, the Statute is not and cannot be promulgated. It is a dead letter, lacking the vital principle, never having had breathed into it the breath of life. There can be no violation of a Statute, till it is made known, and that cannot be made known, which is not intelligible, or which is upon a subject beyond limited human comprehension. The framers of this law had, or had not dis-

inct ideas on the subject on which they were legislating. If they had a clear meaning, they were bound to express themselves clearly, so that there should be no doubt, whether the word God be used in a general or a limited, in a Trinitarian or Anti-Trinitarian sense. If they were groping in darkness themselves, they should not have made a law, which they could not expect to have enforced. What say the Authorities on the subject of the necessity of a law being promulgated or made known, in order to give it validity. Blackstone informs us as follows.

It is likewise "a rule *prescribed*." Because a bare resolution, confined in the breast of the legislator, without manifesting itself by some external sign, can never be properly a law. It is requisite that this resolution be notified to the people who are to obey it.

If our Legislature had published this Statute in the Sanscrit or Chinese languages, no one would have been bound. They might as well have published it in the Sanscrit or Chinese languages, as expressed their law in words and phrases of an indeterminate meaning. Indeed it would have been better if such laws as this Statute had been wrapped up in some language to the people unknown, for then they would be inoperative, ineffectual and harmless. But in the present case, this Statute may be perverted by intolerance and bigotry, to the most dangerous and odious purposes. But suppose the Legislators, who made this penal Statute on the subject of religion, to have been endued with all the intelligence, with which men were ever illuminated. Suppose them to have been wiser than Confucius or Socrates, and as enlightened on the subject of the doctrines of our religion as man can be. How have they displayed this intelligence? Have they informed us in this Statute against denying God, whether that word is to be understood in a Trinitarian or Unitarian sense? No, Gentlemen, we are left in worse than Cimmerian darkness in relation to this matter, for we have just light enough to render "darkness visible," the lurid light gleaming from the faggot of persecution. If the Orthodox believers are correct in their opinions, Belsham and Jefferson and the Unitarian writers may be rightfully convicted of blasphemy for denying God under this Statute, by a Court composed of Professor Stuart for the Judge, and his religious friends for the Jury; for the Unitarians, he says, declare that they do not worship the same God, whom the Orthodox worship, and consequently do not believe in, but deny the God of the

Orthodox. On the other hand, if the Orthodox be incorrect in their opinions, then Professor Stuart and his friends, may be rightfully convicted of blasphemy for denying God, by a Court composed of Dr. Channing for the Judge, and his religious friends for the Jury; for Dr. Channing accuses the Orthodox of "calumniating" their Maker, which is contumeliously reproaching God, the very offence described in the Statute. This is the manner in which the Legislature has left us, in relation to the Statute, which I think can never be sustained by Juries, till judgment and mercy shall flee to "brutish beasts" and men shall lose "their reason."

You have been told, that this is not a matter of conscience, but of law, and that here is a Statute of the Commonwealth, and that it is your duty to sustain it, by your verdict, whatever may be your religious opinions. This is not so. There is a law superior to the Statute, a supreme law, which binds the Legislature and the Judiciary. That law is the Constitution, the provisions of which sacred ordinance bearing on this cause I shall comment upon fully hereafter. There is a power, superior to the Legislature and the Judiciary, which made the Constitution. That power is the people. There is a power superior to the people. That power is the Almighty. In a matter of conscience man is responsible to Him and to Him alone. If a Juror be an Unitarian or a Trinitarian, and believes this Statute made to establish by law an erroneous doctrine, he cannot sustain it. If he be a Christian and believes all penal laws, hostile to the mild spirit of Christianity, he cannot sanction the abuse by his verdict as a Juror, without paltering with his conscience as a Christian. There is no shuffling in a case of conscience. It cannot be surrendered to the authority of any earthly tribunal. No human authority can forge chains for the human conscience. Will you become the weak instruments of your own final condemnation, by sanctioning by your verdict, a Statute, which is either wholly unintelligible, or is so obscure and doubtful in its meaning, that it may be made, in the hands of any sect, which shall become predominant, and hold the control of the political power of the State, a most cruel engine of oppression? Will you condemn this defendant to day, and set an example, and establish a precedent, by which you yourselves may be condemned to-morrow? Will you regard a human law, and disregard the divine law of Christian toleration? Will you this day heckle, twist and spin the hemp, for Abner Kneeland, which to-morrow may be fastened about your own necks? I trust you will not surrender up your consciences, to

the keeping of any authority, and that you will display by your verdict the mild spirit of Christians, and the bold and independent spirit of American freemen. For your own sakes, for the sake of us all, I hope I shall not be disappointed in the high expectations I have formed of your intelligence and independence on this very important occasion.

Does not Professor Stuart, in the passage quoted from his letter, impliedly admit, and assent to the position by Unitarians, that they and the Orthodox "do not worship the same God?" He says the difference between the two parties is "essential." Thus we have it declared from both sides, that they "do not worship the same God," and he justifies the separation of the Orthodox from the Unitarians, upon the ground assumed by their adversaries, and not disputed by Professor Stuart, that they "do not worship the same God."

I again ask, are you to be told, that this is a matter of law, and not of conscience, and that you are not to allow your own opinions in religion to have any effect, on your verdict as Jurors? Suppose such a doctrine had been proclaimed to your Puritan ancestors sitting on Juries, and they had been called upon by the Crown officers, to convict a party, indicted for a violation of some statute, for the support of the Established Religion of England, the mercies of which the Puritans fled from to the wilderness. Would not your Puritan fathers have risen, and with one voice declared, we owe an earthly allegiance, in matters of earthly concernment, to an earthly Sovereign; but in matters of conscience, our allegiance is due only to the King of Kings. We cannot as Jurors, enforce laws, made to sustain doctrines, which as Christians, we believe to be erroneous. Suppose a pious Catholic, to be charged, because of his profession of his belief, and his adoration of the Host, with violating a Statute made to establish a different faith. Would it do to tell the Catholics on the Jury, that the case was a mere question of law, not of conscience? What would they care for all the arguments of this character, and all the instructions of all the Courts in the land, that the Statute was a valid and constitutional law? They would say to the Court, you may send the Catholic at the bar, and the Catholics on the Jury, to the pillory, and the gallows together, but we will let the earth open, and swallow you all up and ourselves, with you, before we will render a verdict, against the dictates of our own consciences. We will not lay perjury on our souls, by declaring by our verdict, that to be true, which, as Christians, we believe to be false. This doctrine, that there is involved,

in prosecutions on penal laws respecting religion, mere questions of law, not of conscience, brings at once into conflict, the law conscience of the Juror, with the conscience of the man which God has implanted in his breast.

Gentlemen. We will now abandon suppositions and hypotheses, and look the Statute in the face. If the Statute be any thing, it is a sectarian law, made to set up an established religion, in this land of liberty, and to compel a belief in the doctrine of the Trinity, by the arguments of the whipping post, the pillory, and the gallows. This is a mode of reasoning in theology, which our Legislature had no right to adopt, and every such law is invalid and unconstitutional. The Legislature is convened to make laws for the people, relative to the business of this life, not to establish creeds in religion. Examine the Statute against Blasphemy, and if it asserts any thing, it asserts and establishes a belief in the Trinity, under the penalties of the whipping post, the pillory, and the gallows. The statute is designed to support that doctrine, and if you this day convict the defendant arraigned before you for its violation, you will confirm the law, and no man, who denies that belief will be safe. Every Unitarian will stand in danger of the punishments prescribed by the law. In order to understand the character of laws, it is usual and proper to look to the manners, opinions and feelings, which prevailed when they were enacted. Were not the people of Massachusetts, at the time of the passage of this law, generally believers in the doctrine of the Trinity, a doctrine revered for so many ages, and still almost universally believed, throughout the ranks of Christians. It was the creed subscribed by the members of most of the churches in the Commonwealth. Was not the Hollis Professor of Divinity, a Trinitarian, agreeably to the statutes of the munificent Baptist founder of the Professorship, which required him to be a person of "sound or Orthodox principles"? These considerations tend to shew, that the Legislature, who made this Statute against Blasphemy, made a Trinitarian statute. An Unitarian Legislature could not have been elected. Indeed there could not have been Unitarians enough found in the various towns, to have composed a Legislature, for that denomination at that time was chiefly confined to Boston and a few other towns in the State. Look to the language of the Statute. It declares blasphemy to consist in denying God, or in contumeliously cursing or reproaching God, or in cursing or reproaching Jesus Christ, or the Holy Ghost. Look at the language of the act. A decisive test of the Tripitarian character of this Statute, is the

provision relating to the Holy Ghost. The Unitarians hold, as I have been taught from my cradle to believe, that there is no such thing, as the Holy Ghost distinct from the Father, and that by the Holy Spirit is to be understood, the Father. Yet the Holy Ghost is actually made distinct from God in this statute. There is no mistake here, there are in this statute, the three persons of the Trinity, as distinctly denoted, as in the creeds of the Church of Rome, and the Church of England, or the Orthodox. Let us compare this Statute with other statutes, on this subject, in order to discover and explain its character. The following are the noted English Trinitarian statutes of modern time. The first is the statute of 1 William and Mary, chap. 18. The thirteenth section requires the following, "profession of Christian faith."

'I A. B. profess Faith in God the Father, and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, one God blessed forevermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.'

The seventeenth section of this act, which is called the Act of Toleration is as follows :

Provided always, and be it further enacted by the Authority aforesaid, That neither this Act, nor any Clause, Article, or Thing herein contained, shall extend or be construed to extend to give any Ease, Benefit, or Advantage to any Papist or Popish Recusant whatsoever, or any Person that shall deny in his preaching or writing the Doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.

The following is a statute of the same Reign passed in the ninth and tenth of William and Mary.

An act for the more effectual suppressing of Blasphemy and Profaneness.

'Whereas many Persons have of late Years openly avowed and published many blasphemous and impious Opinions, contrary to the Doctrines and Principles of the Christian Religion, greatly tending to the Dishonor of Almighty God, and may prove destructive to the Peace and Welfare of this Kingdom: Wherefore for the more effectual suppressing of the said detestable Crimes be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons, having been

educated in, or at any Time having made Profession of the Christian Religion within this Realm, shall by Writing, Printing, Teaching, or advised Speaking deny any one of the Persons in the Holy Trinity to be God, or shall assert or maintain there are more Gods than one, or shall deny the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority, and shall upon Indictment or Information in any of his Majesty's Courts at *Westminster*, or at the Assizes, be thereof lawfully convicted by the Oath of two or more credible Witnesses; such Person or Persons for the first Offence shall be adjudged incapable and disabled in Law, to all Intents and Purposes whatsoever, to have or enjoy any Office or Offices, Employment or Employments, Ecclesiastical, Civil or Military, or any Part in them, or any Profit or Advantage appertaining to them, or any of them: And if any Person or Persons so convicted as aforesaid, shall at the Time of his or their Conviction, enjoy or possess any Office, Place or Employment, such Office, Place, or Employment shall be void, and is hereby declared void: And if such Person or Persons shall be a second time lawfully convicted as aforesaid, of all or any the aforesaid Crime or Crimes, that then he or they shall from thenceforth be disabled to sue, prosecute, plead or use any Action or Information in any Court of Law or Equity, or to be Guardian of any Child, or Executor or Administrator of any Person, or capable of any Legacy or Deed of Gift, or to bear any Office, Civil or Military, or Benefice Ecclesiastical for ever within this Realm, and shall also suffer Imprisonment for the Space of three Years, without Bail or Mainprize, from the Time of such Conviction.

Provided always, and be it enacted by the Authority aforesaid, That no person shall be prosecuted by virtue of this Act, for any Words spoken, unless the Information of such Words shall be given upon Oath before one or more Justice or Justices of the Peace, within four Days after such Words spoken, and the Prosecution of such Offence be within three months after such Information.

Provided also, and be it enacted by the Authority aforesaid, That any Person or Persons, convicted of all or any of the aforesaid Crime or Crimes, in Manner aforesaid, shall for the first offence (upon his, her or their Acknowledgement and Renunciation of such Offence or erroneous Opinions, in the same Court where such Person or Persons was or were convicted, as aforesaid, within the Space of four Months after his, her, or their Conviction) be discharged from all Penalties and Disabilities incurred by such Conviction; any thing in this Act contained to the contrary thereof in any wise notwithstanding.

Let us now examine the Province Laws of Massachusetts. An early act on the subject of blasphemy and heresy is as follows

SECT. 3. If any person within this jurisdiction, whether christian or pagan, shall wittingly and willingly presume to blaspheme the holy name of God, Father, Son or Holy Ghost, with direct, express, presumptuous, or high handed blasphemy, either by wilful or obstinate denying the true God, or his creation, or government, of the world, or shall curse God in like manner, or reproach the holy religion of God; as if it were but a politic device, to keep ignorant men in awe; or shall utter any other kind of blasphemy of the like nature and degree, they shall be put to death, Levit. 21. 15, 16.

SECT. 19. Albeit faith be not wrought by the sword, but by the word; and therefore such pagan Indians as have submitted themselves to our government, though we would not neglect any due helps to bring them on to grace and to the means of it; yet we compel them not to the christian faith, nor to the profession of it) either by force of arms, or by penal laws: nevertheless, seeing the blaspheming of the true God cannot be excused by any ignorance or infirmity of human nature, the eternal power and Godhead being known by the light of nature, and the creation of the world; and common reason requireth every state and society of men to be more careful of preventing the dishonor and contempt of the most high God, (in whom we all consist) than of any mortal prince, or magistrates: it is therefore ordered, and decreed by this court for the honor of the eternal God, who only we worship, and serve, that no person within this jurisdiction, whether christian, or pagan, shall wittingly, and willingly presume to blaspheme his holy name, either by wilful, or obstinate denying the true God, or his creation, or government of the world, or shall curse God, or reproach the holy religion of God, as if it were but a public device to keep ignorant men in awe, nor shall utter any other eminent kind of blasphemy of the like nature, and degree. If any person, or persons whatsoever within our jurisdiction shall break this law, they shall be put to death.

Another ancient act against Heresy is as follows.

SECT. 1. **ALTHOUGH** no human power be lord over the faith and consciences of men, yet because such as bring in damnable heresies, tending to the subversion of the christian faith, and destruction of the souls of men, ought duly to be restrained from such notorious impieties:

It is therefore ordered and declared by the court; that if any christian within this jurisdiction, shall go about to subvert and destroy the christian faith and religion, by breaching and maintaining any damnable heresies; as denying the immortality of the soul, or resurrection of the body, or any sin to be repented of in the regenerate, or any evil done by the outward man to be accounted sin, or

denying that Christ gave himself a ransom for our sins, or shall affirm that we are not justified by his death and righteousness, but by the perfections of our own works, or shall deny the morality of the fourth commandment, or shall openly condemn or oppose the baptizing of infants, or shall purposely depart the congregation at the administration of that ordinance, or shall deny the ordinance of magistracy, or their lawful authority, to make war, or to punish the outward breaches of the first table, or shall endeavor to seduce others to any of the errors or heresies above mentioned; every such person continuing obstinate therein, after due means of conviction, shall be sentenced to banishment. [1646. 44.]

In 1697 just after the dark day of the persecutions and executions for witchcraft in Massachusetts, and before the darkness had been entirely dispelled, the following act, against blasphemy, was passed, from which the present statute, on which the indictment against the prisoner at the bar rests, is copied almost word for word. The provincial act is as follows:

AN ACT AGAINST ATHEISM AND BLASPHEMY.

BE it declared and enacted by the lieutenant governor, council and representatives, convened in general court or assembly, and it is enacted by the authority of the same, that if any person shall presume wilfully to blaspheme the holy name of God, Father, Son, or Holy Ghost, either by denying, cursing or reproaching the true God; his creation or government of the world, or by denying, cursing or reproaching the holy word of God, that is, the canonical Scriptures contained in the books of the Old and New Testament, namely, Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, The Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelation, every one so offending shall be punished by imprisonment, not exceeding six months, and until they find sureties for the good behavior, by sitting in the pillory, by whipping, boring through the tongue with a red hot iron, or sitting upon the gallows with a rope about their neck, at the discretion of the court of assize; and general gaol delivery, before which the trial shall be, according to the circumstances, which may aggravate or alleviate the offence.

Provided, that no more than two of the forementioned punishments shall be inflicted for one and the same fact.

Gentlemen. You see these statutes are all run in one mould, and that they are intended to mould the faith of men, according to a particular creed, a belief in the Trinity. They all arm the believers in the Trinitarian faith, with the power to condemn what they may in the sincerity of their hearts believe to be heresy, and they enable the bigoted of that faith, to proscribe and persecute, all who dare to cherish and profess a different belief. This and every other penal statute respecting religion, is the offspring of the unholy union of Church and State, by which brother has been arrayed against brother, friend against friend, and nation against nation. By means of the fatal offspring of this union, the whole brood of penal laws, and penal prosecutions respecting religion, the different sects, as they have alternately obtained political predominance, have wielded the sword of the law to enforce their opinions. I have said that various statutes on the same subject, are to be compared together, in order to ascertain the true character and meaning of a law. I shall support this position by authority. Blackstone says:

If words happen to be still dubious, we may establish their meaning from the *context*; with which it may be of singular use to compare a word or a sentence, whenever they are ambiguous, equivocal, or intricate. Thus the proema or preface, is often called in to help the construction of an act of parliament. Of the same nature and use is the comparison of a law with other laws, that are made by the same legislator, that have some affinity with the subject, or that expressly relate to the same point. Thus, when the law of England declares murder to be felony without benefit of clergy, we must resort to the same law of England to learn what the benefit of clergy is; and when the common law censures simoniacal contracts, it affords great light to the subject to consider what the canon law has adjudged to be simony.

A similar doctrine has been established in the decisions of the Supreme Judicial Court of Massachusetts. The principle of those decisions is stated in Bigelow's Digest of the Massachusetts Reports, p. 740.

The general system of legislation upon the subject matter may be taken into view, in order to aid the construction of one statute relating to the same subject; and it is proper to consider other statutes in *pari materia*, whether they be repealed or unrepealed.—*Terry & al. v. Foster & al.* i. 146. *Church v. Crocker*, iii. 21. *Holland v. Makepeace*, viii. 423. *The Inh. Somerset v. The Inh. Dighton*, xii. 383. *Holbrook v. Holbrook & al.* xviii. 254.

Gentlemen. Let a person be indicted upon this Statute, for reproaching the Holy Ghost, in which reproaching God, is one branch of offence, reproaching Jesus Christ is another, and reproaching the Holy Ghost, a third and distinct branch of offence. Can Unitarians who do not believe in the existence of any such distinct person, as the Holy Ghost, in whom the Trinitarians believe, render a verdict of guilty on this Statute? Can they render any verdict in any case, which shall sustain this Statute, which in their opinion, sets up, as the object of divine worship, what they believe in their consciences, to be an image of man's invention? If there be Unitarians on this Jury, they surely will not, by a verdict against the defendant, sanction this Trinitarian Statute, by which the intolerant among their religious opponents, may trample them in the dust.

Let me call your attention to a peculiarity in this Statute, a provision which is not to be found in the English or the Provincial statutes, and as I believe, in no law on earth, till the law was passed, on which the prisoner at the bar now stands indicted. I allude to the provision of the law, which declares it blasphemy to deny God's "*final judging of the world,*" and renders the offender liable to the punishments of the dungeon, the whipping post, the pillory and the gallows. This was a blow aimed at the Universalists, a denomination of Christians, before that time, too inconsiderable in numbers to be the object of persecution, but who about that time were rising into importance in this country. It was a blow intended to intimidate and crush the Universalists, and to overpower the arguments of their teachers, by the logic of the whipping post, the pillory and the gallows. If there be an Universalist on this Jury will he not rather perish, than sustain this statute, by his verdict? Will he not sooner see the Court, and the Jury, and the prisoner together sink into the dust, than sanction by his verdict on oath, a law by which himself, his wife and his children may be arraigned at this bar, and condemned and punished as blasphemers, for professing a religious belief, which is approved by the dictates of their own consciences? There is no doubt about the matter. It is a hit at the Universalists "a palpable hit," and with a weapon tinged with the deadly poison of religious persecution. The Universalists deny the final judging of the world, referred to in this Trinitarian Statute, and this provision of the Statute was manifestly inserted, to convert them, from their heresies, by a judging in this world, and a condemnation, to the whipping post, the pillory, and the gallows. *The following is an account of the creed of the Universalists from Adams' View of Religions.*

UNIVERSALISTS. The sentiment, which has acquired its professors this appellation, was embraced by Origen in the third century; and, in more modern times, by Chevalier Ramsay, Dr. Cheyne, Mr. Hartley, and others. The plan of universal salvation, as exhibited by a learned divine of the present day, who, in a late performance, entitled, "*The Salvation of all Men*," has made several additions to the sentiments of the above mentioned authors, is as follows:

That the scheme of revelation has the happiness of all mankind lying at bottom, as its great and ultimate end; that it gradually tends to this end; and will not fail of its accomplishment, when fully completed. Some, in consequence of its operation, as conducted by the Son of God, will be disposed and enabled, in this present state, to make such improvements in virtue, the only rational preparative for happiness, as that they shall enter upon the enjoyment of it, in the next state. Others who have proved incurable under the means, which have been used with them in this state, instead of being happy in the next, will be awfully miserable; not to continue so finally, but that they may be convinced of their folly, and recovered to a virtuous frame of mind—and this will be the effect of the future torments upon many; the consequence whereof will be their salvation, they being thus fitted for it. And there may be yet other states, before the scheme of God may be perfected, and mankind universally cured of their moral disorders, and in this way qualified for, and finally instated in, eternal happiness. But however many states some of the individuals of the human species may pass through, and of however long continuance they may be, the whole is intended to subserve the grand design of universal happiness, and will finally terminate in it; inasmuch, that the Son of God, and Saviour of men, will not deliver up his trust into the hands of the Father, who committed it to him, till he has discharged his obligations in virtue of it; having finally fixed all men in heaven when God will be *all in all*.

A few of the arguments made use of, in defence of this system, are as follows.

Christ died not for a select number of men only, but for mankind *universally*, and without exception, or limitation.

For the sacred writers are singularly emphatical in expressing this truth. They speak not only of Christ's "*dying for us*," "*for our sins*," "*for sinners*," "*for the ungodly*," "*for the unjust*," but affirm, in yet more extensive terms, that "*he died for the world*," for "*the whole world*." See 1st Thess. v. 10; 1st Cor. xv. 3; Rom. v. 6, 8; 1st Pet. iii. 18; John i. 29. iii. 16, 17; 1st John ii. 2; Heb. ii. 9; and a variety of other passages.

If Christ died for all, it is far more reasonable to believe, that the whole human kind, in consequence of his death, will finally be saved, than that the greatest part of them should perish. More honor is hereby reflected on God; greater virtue is attributed to

the blood of Christ shed on the cross ; and instead of dying in vain, as to any real good, which will finally be the event, with respect to the greatest part of mankind, he will be made to die to the best and noblest purposes, even the eternal happiness of a whole world of intelligent and moral beings.

The Universalists are divided in sentiment on this subject, but all, who bear the name of Universalists, whether Restorationists or otherwise, deny the "final judging" and condemnation, which is believed in by so many other Christians, and they cherish the belief, of the final salvation of all men. Consequently every Universalist is liable to the penalties of blasphemy, by this cruel Statute, containing a persecuting provision, which never before disgraced a statute book.

There is another ground upon which this statute must be invalidated. The Statute declares it blasphemy, to contumeliously reproach the Holy Word of God, by exposing to contempt and ridicule the canonical scriptures "or any part of them." What version of the books of the Old and New Testament, was meant? Was it the Catholic version? That will not be pretended. The Legislature unquestionably intended the Protestant version of the Scriptures in use in the churches, schools and families of the people of the Commonwealth, else the law is void for uncertainty. It undoubtedly intended the translation of the Scriptures, made in the time of James the First, by the celebrated Abbot, and his learned companions, selected for that great work. Every part of that version, every verse, word and syllable is sustained as genuine, and placed beyond the reach of the inroads of biblical criticism, by the authors of this law. The Statute is void for violating the foundation principles on which human legislation depends. The Legislature has not the right to make a law, to prevent the improvement of the human mind, and to compel the people to adopt and maintain errors. Human Legislatures have not the right to cramp the human intellect, any more than to cripple the bodies of men. They have no right to stop the growth of knowledge and to set bounds to the range of enquiry after truth, especially in religion, when it is our duty diligently to seek after the truth. The Mahometan conqueror indeed said, when he burned the splendid library at Alexandria, that if the books contained merely the doctrines of the Koran, they were superfluous and useless, and need not be preserved; and if they contained different doctrines, from those of the Koran they were pernicious and ought to be destroyed. But the Legislature, of a people

professing to be free, has not the despotic power of the turbaned victor at the head of his fanatical and triumphant army. Our Legislature could not make a valid law, preventing investigation after truth, and the exposure of errors in relation to religion, and especially in relation to corruptions of the Scriptures;— Yet it has attempted to do this, in this very Statute. It has undertaken not only to define, what is the Holy Word of God; but to establish by an Act of the General Court, the authenticity and correctness of the version of the Scriptures in common use amongst us. It has attempted to prevent any efforts by biblical criticism, to correct any errors in our version of the books of the Old and New Testament, by the severe penalties of this Statute. No one is permitted to cast reproach upon “any part” or any verse of that version. Every verse word and syllable is sanctioned, and declared to be “canonical,” and the “Holy word of God.” Whatever errors there may be in the version of the Scriptures in common use, by reason of incorrect copying in the multiplication of copies of the Scriptures, before the invention of printing, or by reason of erroneous translations, or errors of the press, they must remain untouched by the sacreligious hand of learning. The whipping post, the pillory and the gallows, are denounced as the punishments of the presumptuous scholar, who shall discover and correct a single error, “in any part” of this version. It is blasphemy to cast reproach upon a single verse in these Books of Scripture. To say that a verse is an interpolation is of course casting reproach upon it, and exposing it to contempt and ridicule, for it brands that verse as spurious. But every verse and every part of these Books is protected by this Statute, from contempt, ridicule and reproach. This Statute therefore puts an end to the progress of the pious and learned labours of the divines and scholars, employed in biblical criticism, for every part of our version of the Old and New Testament is protected from criticism by those terrors to the evil doers the biblical critics, those bulwarks of learning, the whipping post, the pillory and the gallows. Our colleges must abandon their Professorships, for encouraging and promoting enquiries on the interesting and important subject of biblical criticism. The Legislature with a liberality and wisdom like that of the Moslem warrior, who burned the Alexandrian library, has settled all the vexed questions of biblical criticism, which have engaged the attention and called forth the energies of the finest minds in the world, and put an end to all further enquiries. Was there ever any thing bearing the form and superscription of a law, so absurd as this Statute, which con-

dems Unitarians indirectly, Universalists directly, and the most learned and pious scholars of the age, to the whipping post, the pillory and the gallows? As well might the Legislature have essayed to stop the course of our rivers, to arrest the rising tide, and confine the ocean, as to have attempted to chain the mind of man, check the progress of human learning, and stay the mighty flood of knowledge, constantly rising with accumulating force, and which will soon sweep into oblivion, all the superstitions, the errors and the oppressions of former ages, which have defiled the pure doctrine and disgraced the history of Christianity.

If the writers of the Scriptures were inspired, the copyists of the sacred books before printing was known were not inspired, and in the multiplication of the copies, errors have undoubtedly crept in to the Books, and tares have become mixed with the wheat. Since printing was discovered the compositors and the press men, in the printing offices, where the various editions of the Bibles have been published, have not been inspired, and there has been no security against errors of the press. Is it not admitted by the learned divines of almost every faith, that there are errors in the various versions of the Scriptures in use? Have there not always been important differences in the various versions which have been published of the Scriptures? Dr. Priestley as has been seen denies the authenticity of the chapters in the New Testament, which are relied on, to prove the doctrine of the miraculous conception, and says, that these chapters were not in some of the earliest copies of the Gospel, those of the Ebionite's who were the Unitarians of the Age of the Apostles. This subject in relation to an important passage in John is explained in a most able manner in the letters of the Reverend Henry Ware, jr. now one of the Government of Harvard College, addressed to the Reverend Mr. McLeod, in 1823, on account of his use of a disputed verse in the common version of the Scriptures, as a text for a sermon. Here is an extract from Mr. Ware's letters.

It is not my object to make any general defence of the faith against which you have been preaching; much less to complain at your taking an opportunity to warn your people against what you esteem a dangerous error. Your duty to your conscience and to them required it of you; and I would be the last to advocate any abridgement of the liberty of speech in the pulpit. It is not because you have defended Trinitarianism that I ask to be heard; that, you had an unquestionable right to do; but because you de-

fended it upon ground which it appears to me, you had no right to take. When I went up to worship in your church on the evening of the last Sabbath in April, nothing could exceed my astonishment at hearing you announce as your text, that celebrated verse—*There are three that bear record in Heaven, the Father, the Word, and the Holy Ghost, and these three are one.* (1 John, v. 7.) I did not readily recover from my surprise. The opinion which is universally expressed by the learned respecting this verse, came fresh to my recollection; and it was with difficulty I could persuade myself, that I had heard it quoted as a part of the Christian Scriptures in that sacred place. It was true, I had been told, that some ministers had lately quoted it as authentic; but I had taken it for granted they must be uninformed and ignorant men; for I had never yet seen reason to doubt the assertion of an able theologian, “that no man of tolerable learning or fairness, at the present day, would think of using it.” But now I found it adduced by one to whom I could attribute neither ignorance nor unfairness; and what, then, should relieve my wonder?

My surprise at your use of this text has not ceased. The learned of the present day, throughout the religious world, have agreed, after a long and laborious examination, in pronouncing it no part of the original Scriptures. All who are most competent to judge, Trinitarians as well as Unitarians, with one voice, and with scarcely any reserve, declare it to be an unauthorized addition to the Epistle of John; so that it is, with one consent, thrown out of the Trinitarian controversy. I may well, therefore, be astonished, as I am ignorant of the reasons upon which you have made up your mind, that you should argue from it as genuine.

I do not forget that you told us, that it had been your object in a preceding discourse, “to establish its genuineness as a part of Scripture.” I could not suspect you, indeed, of omitting, as some have done, so important a consideration; and I cannot but regret, that I had not the opportunity of hearing it discussed. For I acknowledge I am at a loss to conjecture whence you could have gathered sufficient proof to outweigh all those circumstances of evidence, which have for so long a time put the question at rest. It would be wrong, however, to deal in mere assertion on this subject. I beg leave, therefore, to lay before you the language of a few respectable writers—all Trinitarians—whose decisions on this subject, of which they were well able to judge have been thought conclusive.

Let me first ask your attention to the *Electric Review*, the religious character of which is unsuspiciously orthodox. The passage has been frequently quoted, but the very honorable and decided stand which it takes in behalf of the purity of the sacred text, renders it worthy of perpetual remembrance.

“Upon this,” says the writer, “we need not spend many words.

It is found in no Greek manuscript, ancient or modern, except one, to which we shall presently advert ; in no ancient Version, being interpolated only in the later transcripts of the Vulgate. Not one of the Greek fathers recognises it, though many of them collect every species and shadow of argument, down to the most allegorical and shockingly ridiculous, in favor of the doctrine of the Trinity, though they often cite the words immediately contiguous both before and after ; and though, with immense labor and art, they extract from the next words the very sense which this passage has in following times been adduced to furnish. Of the *Latin* fathers, not one has quoted it, till Eucherius, of Lyons, in the middle of the fifth century ; and in his works *there is much reason to believe that it has been interpolated.*"

After this summary of the evidence, the writer proceeds in the following striking and decided tone. "Under these circumstances, we are UNSPEAKABLY ASHAMED that any modern divines should have fought, *pedibus et unguibus*, for the retention of a passage so INDISPUTABLY SPURIOUS. We could adduce half a dozen, or half a score passages of ample length, supported by better authority than this, but which are rejected in every printed edition and translation."

The learned Griesbach, another believer in the Trinity, whose ability to judge in questions of this nature will be universally acknowledged, makes use of language equally strong with that just quoted. "If it were worth while," he says, "I would undertake to defend *six hundred of the most futile and universally rejected readings* by testimonies and arguments equally numerous and valid, nay, in general, more numerous and valid than those which the advocates of this passage adduce ; nor would the defenders of a genuine text have so many and weighty arguments to oppose to such an absurd attempt, as have been produced against the defenders of this verse. I wish those would seriously consider this, who may in future undertake to defend this text."

Bishop Lowth, another learned Trinitarian, is equally decided. "We have some wranglers in theology," he says, "sworn to follow their master, who are prepared to defend any thing, however absurd, should there be occasion. But I believe there is no one among us, in the least degree conversant with sacred criticism, and having the use of his understanding, who would be willing to contend for the genuineness of the verse, 1 John, v. 7."

Michaelis, in his most learned and valuable Introduction to the New Testament, says, "It is very extraordinary that any man should *think* of opposing the testimony" in favor of this verse to the testimony against it. And again he says, "One would suppose that no critic, especially if a Protestant, would hesitate a moment to condemn as spurious, a passage," supported by such feeble evidence as this. To each of these sentences he adds a summary of *the evidence*, which it is unnecessary to quote here.

Dr. Middleton, in his elaborate work on the Greek article, tells us, that this passage is "now pretty generally abandoned as spurious;" and that if any one will study the controversy, "the probable result will be, that he will close the examination with a *firm belief that the passage is spurious*." He adds afterward—"in the rejection of the controverted passage, learned and good men are now for the most part agreed; and I contemplate with admiration and delight, the gigantic exertions of intellect which have established this acquiescence."

Rosenmuller observes, "It is the opinion of most critics at the present day, that these words are spurious."

Mr. Wardlaw, a late zealous and eloquent defender of the doctrine of the Trinity, is no less positive. "Certainly," he says, "this text should have been entitled to hold the first place, had its genuineness not been disputed, as that of many texts has been, on slight grounds. I freely acknowledge, however, that the evidence of the spuriousness of this celebrated passage, even if it were much less conclusive, than, in my mind, it appears to be, would be quite sufficient to prevent me from resting upon it any part of the weight of this argument."

To the same purpose the Bishop of Lincoln, in his 'Elements of Christian Theology,' says, "I must own, that after an attentive consideration of the controversy relative to that passage, *I am convinced that it is spurious*."

Prof. Stuart undoubtedly holds the same opinion respecting this verse; for in adducing the texts in favor of the doctrine of the Trinity, he omits all mention of this—whereas if he thought it genuine, he must have given it a conspicuous place. He probably alludes to it, with others, when he says, he shall "select only those texts, the language of which appears to be genuine, and above the condemnation of textual criticism."

In this place may be added the fact, that the Great Reformer, LUTHER, uniformly rejected his verse from this Translation of the New Testament. He did not admit it to a place in the edition which was publishing at the time of his death; and "he concluded his preface to that edition," says Charles Butler, "with what may be termed *his dying request*, that *upon no account his translation should be altered in the slightest instance*;" which of course, implies his firm persuasion, that this verse does not belong to the Bible.

To these names, some of them amongst the most honored in the church, might be added many more equally well known; it is enough to mention those eminent biblical critics, Simon, and Weststein; Benson, Grotius, and Semler, (who, says Michaelis, "not only confuted all the arguments which had been used in favor of this verse, but wrote the most important work which we have on this subject,") Sir Isaac Newton, Bishop Herbert Marsh, Archbishop Newcome, and the distinguished Methodist, Dr. Adam Clarke; and,

finally, that illustrious scholar, Porson, whose letters, by which the controversy concerning the verse was brought to a final conclusion, "are an eternal monument of his erudition, critical sagacity, and wit."

To the extracts already made, others might be added, if I were in a situation to have access to the necessary books. I have not made them under the idea that you are unacquainted with them; but simply, that it might be seen how strong and unqualified is the conviction produced upon the minds of the most competent judges, by the evidence against this verse.

Is not this verse a part of the version in common use, and a part of the canonical Scriptures according to this Statute? Does not the Reverend Mr. Ware reproach this verse and also reproach a brother Clergyman, for presuming to use it, as a text for a sermon? He declares it to be an interpolation in the New Testament. And he vouches Luther, Charles Butler, the eminent Catholic lawyers of England, and one of the most distinguished among the scholars of that country, and the most celebrated divines of the Church of England, and the eloquent and learned Professor Stuart, to sustain him, in his attack upon this verse, and his attempt to expose it to the reproach of spuriousness. Suppose a passage in an ordinary testament or will of a citizen to be decried as an interpolation. Would not this be branding it with the reproach of spuriousness and falsehood? Would it not be casting contumelious reproach upon the passage, and exposing it to contempt? The Reverend Rodolphus Dickinson, Rector of St. Paul's Church in Pendleton, South Carolina, has lately published in this City, a new work entitled "A New and Corrected Version of the New Testament." In page 497 is the following note respecting this disputed verse.

It is likely this verse is not genuine. It is wanting in every Greek MS of this Epistle written *before* the invention of printing; one excepted, the *Codex Montfortii*, in Trinity College, Dublin; the others which omit this verse amount to *one hundred and twelve*. It is wanting in both the Syriac, all the Arabic, Ethiopic, the Coptic, Sahidic, Armenian, Slavonian, &c, in a word, in all the ancient *Versions* but the Vulgate; and even of this Version many of the most ancient and correct MSS have it not. It is wanting also, in all the ancient *Greek Fathers*; and in most even of the Latin. Many of the *Greek Fathers* quote both verse 6, and verse 8, applying them to the Trinity and Divinity of Christ, and the Holy Spirit; and indeed endeavor to prove the doctrine of the Trinity from verse 6, and verse 8, without referring to any such verse as the 7th, which, had it existed, would have been a more positive

proof, and one that could not have been overlooked. The *Latin Fathers* do not quote it, even where it would have greatly strengthened their arguments; and where, had it existed, it might have been most naturally expected. The *Latin writers* who do refer to the three heavenly Witnesses vary greatly in their quotations; the more *ancient* placing the *eighth verse* before the *seventh*; and very many omitting, after the earthly witnesses, the clause *these three are one*, and in *Christ Jesus*—others use different terms. It is wanting in the *first edition* of Erasmus, A. D. 1516; in his *second edition* 1519; but he added it in the *third* from the *Codex Montfortii*. It is wanting in the editions of *Aldus*, *Gerbelius*, *Cephalus*, &c. It is wanting in the *German translation* of *LUTHER*, and in *all the editions* of it published *during his lifetime*. It is inserted in our early *English translations*, but with marks of *doubtfulness*. In short, it stands on no authority sufficient to authenticate any part of revelation, professing to have come from God. *Clarke*.

By the best inquiry that I have been able to make, this verse is wanting in the manuscripts of all languages but the Latin.

Sir Isaac Newton.

I am little disposed to seek support for an awful truth from materials of suspected soundness;—and more disposed to avoid entering into the discussion, since the particular verse in question, so far as the main purpose and connexion of the apostle's argument are concerned, is illustrative and ornamental only. *Heber.*

I must own, that after an attentive consideration of the controversy relative to that passage, I am convinced that it is spurious.

Pretyman.

It appears rather below the Christian cause to be so zealous in defending a text, which in all ages has been thought so very doubtful.

William Gilpin.

Professor Griesbach, who does not appear to be an enemy to the doctrine, and who has carefully and critically examined all the evidences and arguments on both sides, has given up the text as utterly defenceless; and thinks, that to plead for its authenticity is dangerous. 'For if,' says he, 'a few dubious, suspicious, and modern evidences, with such weak arguments as are usually adduced, are sufficient to demonstrate the authenticity of a *reading*, then there remains no longer any criterion by which the *spurious* may be distinguished from the *genuine*; and consequently, the whole text of the New Testament is unascertained and dubious.' *Clarke.*

Clarke, Griesbach, and other critics, in the style of apology, accompany their rejection of the text by an avowal of their faith in the doctrine, which it is supposed to sustain. What connection has this with the subject? A translator is not thus on confession. It is degrading. He ought to disdain it. Facts are his elements, not theories; results of truth his objects, not the tendencies upon theological polemics.—The preceding passage is incontestably

an interpolation. Its authenticity, as a part of the original text, has long since, in many instances, been completely invalidated; and that indiscretion, which still persists in vindicating the integrity of the clause, would seem prepared, that the foundations of the great deep of sacred criticism should be broken up, and the flood-gates of indefinite glosses thrown open, to create universal confusion, and to contaminate and overwhelm the unadulterated word of God.

TRANS.

In an edition of the Scriptures, a copy of which is now on the table before me, printed in 1580, I believe within a century after the discovery of printing in Europe, and which is in the Latin language, this passage is omitted. I again enquire, has the Legislature a right to punish biblical criticism, as the offence of blasphemy, and to overthrow the arguments, and destroy the researches of learned men on this subject by the whipping post, the pillory and the gallows? If you honestly believe this verse to be an interpolation have you not a right to mark it in your Bibles for the instruction of your children? and will you by sustaining this Statute by your verdict renounce this right? In many editions of the Scriptures this passage is printed in italics in a different manner from the other unsuspected passages, in order to suggest to the reader, that the genuineness of the verse is questioned. Have you not a right to mark it as spurious in your Bibles? But you cannot do so, without casting upon it reproach and contempt, and exposing yourselves, according to this Statute, if you sustain its validity, to the pillory and the gallows. Gentlemen, you see, that if this Statute be not invalidated by your verdict, we shall at once be carried back into those ages when the world was enveloped in the worse than Egyptian darkness, the darkness of superstitious ignorance.

Gentlemen. We will leave the Statute of Massachusetts against Blasphemy, and examine the Common Law doctrine on the subject of libel, which is supposed to bear on this case. It was told you in the opening speech of the Government's counsel, that if the defendant cannot be convicted upon this Statute, he may be condemned at Common Law for a blasphemous libel against the Christian Religion. Various decisions of the English Judges were referred to on the subject of publications, against the Established Religion, and the Established Church of England, which in the BRITISH Courts, have been holden to be libels and punishable as common law offences. An attempt is now made to transplant this exotic doctrine of the English Courts, the rank growth of a Monarchy, to this sacred soil of

freedom. I shall have something to say hereafter in relation to this law Christianity of England; but at present I ask your attention to another part of the case.

By the common law, as it is declared in the English law books, publications are considered libels, which are offensive to morals, and hostile to the Established Religion and Established Church, which in England the Judges call Christianity, although it was that Christianity, which our Puritan ancestors abhorred and fled from, even to the wilderness the home of the heathen savage. Let us first examine the doctrine in relation to immoral publications, without reference to religion. The case of the prisoner at the bar, does not fall within that class of libels, for that class embraces merely lewd and lascivious publications, like some notorious works, filled with grossly indecent pictures and descriptions, calculated, to sully and corrupt the purity of youth, and to subvert the foundations of virtue. An English work, one of the most infamous of these vile productions, was republished in the County of Worcester in this Commonwealth. The publisher was indicted and convicted, and the case is reported in the Seventeenth volume of the Massachusetts Reports. It was rightly held that the publisher of such an atrocious book was answerable to the law, and he was condemned and punished. Every person who commits such a deadly sin against morality, as an attempt to debauch the morals of youth, and destroy in the innocent breasts of the young, the principles of virtue, which all of every religious faith regard, is an enemy to the human race, and properly punishable as a dangerous violation of the public peace. In such a case there is an offence committed against good morals, and a fatal blow is struck at the well being of society. Morals alone, not disputes in religion or questions of propriety of style, are involved. But an attack upon a particular religious belief, however coarse and improper, is not necessarily an attack upon morality, because, those who oppose each other most furiously and indecently on account of their differences in religion all generally agree perfectly on every point of morals. The respective disputants may practice and illustrate the virtues of morality in their conduct, although they may violate good manners, offend good taste, and be betrayed into most gross indecencies of style in their religious controversies. Enlightened men every where agree in the general maxims of morality. But they do not agree any where in religious tenets. Neither can they agree what opinions, writings, or arguments in religion, promote or injure the cause of morality. A Christian declares that a religious book written by an East

Indian philosopher or Priest, will sap the foundations of morality, by subverting the true religion. The Bramin and the Pundit on the other hand assert, that that book teaches the true faith, and thereby establishes the most firm stay and support to morality. The Christian condemns the religious works of the Mahometan Doctors, because the rewards there promised to the faithful Musselman, are inconsistent with his ideas of morality. The Mahometan teachers, on the other hand, believe and maintain, that the hopes cherished, and the rewards promised in the books of their religion, furnish incentives to virtue in this life, and produce the brightest examples of good conduct among men. A Calvinist says, that the doctrines of the religious books of the Universalists, take away all restraint upon evil doing, and destroy the guard of conscience, and therefore are dangerous to morality. The Universalist replies that the books of this religion make good men in this life, and fit all men for happiness hereafter. The Unitarian charges upon the Calvinist, that his religious works on predestination, teach fatalism, and are dangerous to morality, by inducing men to believe, that all their bad actions are not things which they could have avoided, and that they are the results of a power and influence, other than their own wills. Thus you see in respect to these points, that there is no fixed standard, no settled religious belief, which is considered as exclusively identified with morality. But all of every religious belief, and every unbelief, hold that morality is the universal cement of society, and that whoever attacks morality, offends against society. But the law cannot proceed a jot or tittle beyond that point of mere morality, for the moment it undertakes to punish an attack upon religion, as an attack upon morality, then the question arises, and must be settled, what particular faith is religion; for none but the true faith can be religion, and we are tost on a sea of uncertainty without star or compass to guide our course.

The case of the prisoner at the bar does not fall within the class of libels against morality. The indelicacy of the first article, the only composition to which the charge of obscenity is applied, is rather an offence against good taste and propriety, than against morality. That however is an article, for which the defendant is neither morally, nor legally accountable. Yet gross and offensive as it may be, it does not resemble those publications, which are offences at common law, as libellous publications against morality. Mere indecency of style, like indelicacy in conversation, is not indictable. The character of lewdness must attach to the publication, to render it the

legitimate subject of a prosecution for a libel at Common Law, as an attack upon morality. This first article disgusts, but it cannot allure. Writings of merely an indecent character, like gross and offensive language or manners, may be despised, but are not the subject of prosecutions. Such writings are violations of the canons of criticism, but not of the laws of the land. They are affairs for the critics, not the constables; for the lash of public opinion, not the scourge of the public executioner; for public contempt, not the pillory and the gallows.

Another branch of the law of libel is respecting the abuse of persons. The branch does not reach the present case. Such abuse is punishable, but abusive attacks upon opinions are not punishable by law. It is upon this ground, that the unrestrained freedom of literary criticism is permitted by law, and sanctioned by decisions in courts of justice. An author's person and private character shall not be attacked, but his opinions, arguments and style, may be assailed with all the artillery of argument, and all the arrows of ridicule. The law shields the character of a person, but does not shield the opinions of a person. This article complained of contains no abuse of any private character. Why does the law hold an offensive attack in writing, a stain upon the character of an individual, a public offence? It is for the sake of preserving the peace of society, because the blood of the injured party may be stirred by the insult, and he may disturb the public peace in seeking to avenge the wrong. This is the principle, which is the root of this branch of the law of libel. That great man, Professor Stuart, in his capital letter on Religious Liberty, displays this view of the subject in the following passage, with all the accuracy of a sound and experienced lawyer.

We not only believe that all men should be left free to form their religious opinions, without any civil penalties or disabilities, but we maintain most fully, that *when the religious sentiments of any one are formed, he has a right to propagate them, to defend them, and to support them, by his efforts, his pen, his property, or his influence.*

In all this we understand of course, that in so doing he does not slander or abuse his neighbor, nor deny him any civil or social right as a member of the community, nor hinder him in the lawful exercise of it. Of the former of these faults the civil law justly may take cognizance. Against the latter, the law of love and of doing as we would be done by protests.

We believe most fully, that men have a right to propagate their religious sentiments, if they confine themselves to argument and persuasion, and do not appeal to abuse, which is a crime in the eye

of the civil law, it being manifestly against the peace of the community. We are well aware, indeed, of the mischiefs which may result from a free right to propagate religious or rather *irreligious* sentiments of any kind. We know too well, that incalculable evil the publication of such books as the *Age of Reason*, the works of Boulanger, of Voltaire, and of La Mettrie have occasioned. We shudder at it as one of the most dreadful of evils, inasmuch as it takes hold on *eternity* and not merely on time. But dreadful as it is, we regard as a still greater evil, the power of civil government, or of any ecclesiastical tribunal, to suppress the publication of books at its option. To-day it may choose, as Frederic the Great did, and the French Directory after him, to circulate widely Voltaire, and D'Alembert, and Rousseau; or to-morrow it may spread wide the poison of some heresy lurking under a Christian name; while at the same time, it inhibits all antidotes to these tremendous evils. The liberty of the press, *the unreserved liberty of it*, is in our view fundamental to religious liberty. If the press be, as it doubtless sometimes is, a most terrible instrument of doing evil; it is also one of the most efficient of all instruments in doing good. We would forever leave it open and free to do good; and if the liberty to do evil must come along with this (and we do not see how it is possible to prevent it,) why then the friends of truth must trust to argument, to reason, to conscience, and to God, for triumph over the powers of darkness. And this they may do, without peril to the cause in which they are engaged.

Here we perceive that Professor Stuart makes the proper legal distinction. He imposes the only proper restraints upon the right of maintaining our own opinions, the restrictions of not slandering our neighbor, or denying him his civil and social rights. His character, his civil and social rights are not to be assailed, but there is no exemption claimed for his opinions. They must be defended by the same arms with which they are attacked, by intellectual weapons, not the sword of the government. In all those cases public opinions, not public tribunals of justice, holds the corrective power, and the only corrective power. The evil of abusive compositions cures itself. Those writings which are gross and offensive, produce no sort of effect on the public mind, and vulgarity always excites a prejudice against the cause in which it is displayed. Coarse attacks upon sentiments, do not stand upon the ground of coarse attacks upon individuals. In assailing a religious belief, who is reproached? Whose character is attacked? Who has the right to consider it a personal offence to himself? Who is to be provoked to a breach of the public peace? The offence of an attack upon religion, is an offence against Heaven, and to Heaven.

alone belongs the prerogative to avenge. It cannot be assumed that an attack, upon opinions which are regarded, is an attack upon individuals cherishing those opinions; for the moment that ground shall be assumed, either there can be no opinions, however erroneous, examined and exposed, lest personal offence may be given, or else the peace of society will be disturbed, and the world filled with quarrels and bloodshed. There is, there must be a privilege in relation to attacks made upon particular opinions, as well religious as political, which cannot be extended to attacks upon the character of individuals. All freedom of opinions will be destroyed unless opinions may be freely and boldly examined. If they are correct, they will stand the test. If they are incorrect, the sooner they are exploded, by the power of reason, the better it is for the cause of truth, and human improvement.

It is contended that an attack upon Christianity is necessarily an attack upon morality. Then it must be that they are inseparable, or one and the same thing. This cannot be correct, although the Christian Gospel in its simplicity comprises a most pure and sublime system of morals. It is not philosophically correct, that Christianity and morality are the same, or that they are inseparable. If so, there never could have been and there never can be any morality, without Christianity. Have we not heard from the pulpits of the most distinguished divines, that morality was quite a distinct thing from Christianity, and that morality was filthy rags? Are the pure vestments of Christianity filthy rags? I have just been told by an eminent clergyman of this city who now is within the reach of my voice, that some very pious Christians, whose zeal I should suppose a little outstrips their knowledge, hold that morality is exceedingly dangerous, as it induces the worker of righteousness to place too great a reliance upon this support, and therefore brings his soul into greater peril of utter perdition. The world has been told, by Dr. Horsely a proud Lord in lawn, of the House of Lords of the Imperial Parliament of Great Britain "that Unitarianism being heresy even the moral good of the Unitarians is sin." According to the doctrine of such Christians, morality and Christianity, are things as far removed from each other, as the earth from the Heavens.

If morality and Christianity be one and the same thing, or things inseparable, how were societies formed, governments established, and nations raised to power and glory before Jesus Christ was born and the glad tidings of his Gospel proclaimed? Upon what principles was society regulated, during the thous-

ands of years in which this Globe rolled through the fields of space, in its appointed circuit around the glorious luminary—the centre of our system, before the revelation of Christianity was made? Was there no morality in the days of Homer's heroes, among whom were some of the most glorious characters ever described in any work of fact or imagination? Was there no morality in the heroic ages, or were the Sages and the Chiefs of the *Iliad*, the *Odyssey*, the *Æneid*—ideal models of human excellence, the fanciful creations of the immortal Bards of Greece and Rome? Was there no morality in the days of Homer, Pythagoras, Solon, Socrates, Plato, Aristides, Cicero and Virgil? Was there no morality in the vast, populous and civilized empire of China in the time of Confucius? Was there no morality in the Great Kingdom of Egypt, where before even the commandments were proclaimed, mid the thunders of Mount Sinai, Benjamin was accused of an offence against morality, because of the cup of Joseph, which was found in his sack? Was there no morality amongst the immense nations of the American continent, stretching almost from Pole to Pole, till the lofty and daring genius of Columbus impelled him to the discovery of the New World? Was there no morality among the civilized Mexicans, till Cortez subverted the empire of Montezuma, and stretched Gautimozin on the bed of living coals? Was there no morality in the rich and extended empire of the gentle and polished Peruvians, till the Spaniards shed the blood of the Incas, robbed the palaces, and plundered the temples? Was there no morality in the land of Rolla—the chieftain immortalized by the genius of Kotzebue and Sheridan, till Rizarro came to deluge that land in blood, and proclaim the Gospel of the Prince of Peace, by the voice of the trumpet, and the mouth of the cannon? Has there been no morality from the earliest time in those seats of innocence and contemplation,—the dwellings of the Bramins? Is there no morality among the great nations more numerous than Christians, who follow the banner of the Crescent and whose cry, there is but one God and Mahomet is his Prophet, resounds from Eastern Europe to the extremities of Asia and Africa. Is there now no morality among five sixths of mankind, who have not yet received the blessings of the religion of Jesus Christ? The supposition that morality and Christianity are inseparable, that morality cannot exist without Christianity, is contradicted by history. While it is an affront to the understandings of men, it casts a reproach upon the goodness of God, who while he has sown the seeds of morality throughout the earth, has permitted the knowledge of Christianity, and the be-

lief in Christian doctrines, to be as yet confined to a small portion of the great human family.

Illustrations from history abundantly show that morality can exist without Christianity. Is there not a beautiful instance in ancient history of the forgiveness of an enemy, and of magnanimity to a fallen foe, which, the Head of the Church of England in our time—the Prince Régent of the British empire, had not the lofty virtue to imitate? I allude to the different treatment of the Themistocles of ancient times and the modern Themistocles, by the Heathen and the Christian Monarchs. Did not this Persian king display more true virtue, more of the genuine spirit of the Gospel of Jesus Christ than the Christian Sovereign? Themistocles had repulsed the fleets and armies of Persia, and raised the Athenian Republic to that pinnacle of glory, which Great Britain reached when the vanquished Napoleon came a suppliant to a victorious foe. The statesman of Athens experienced the ingratitude of the Republic, and was compelled to seek at the Persian court a retreat from the persecution of his countrymen. He threw himself at the feet of the Monarch of a nation whose fleets he had captured, and whose immense armies he had overthrown, and asked for protection and hospitality. Was it denied him? No, Gentlemen, all enmity was forgotten, when they beheld the great man of the age in the depth of distress. He was received with kindness, and entertained with honor. The revenue of cities was assigned for his support, and the illustrious and unfortunate Athenian was made the chief among the friends of the Great King, and the object of the admiration of his brilliant Court. Compare the conduct of the Heathen Prince with the treatment by the Christian Sovereign of a greater man than even Themistocles? The Emperor Napoleon was received under circumstances which ought to have bound the consciences of a Christian people, and the honor of a Christian Government. He said to the British Prince, “I come like Themistocles to throw myself upon the hospitality of the British people.” But he was not received by this Christian Government, as was Themistocles by the Persians. He was denied the honorable asylum which he sought. The laws of nations, the dictates of humanity, and the precepts of the Gospel were violated, and he was borne away to a pestilent rock in the midst of the ocean, which, after six years of his cruel exile and agony had elapsed, was rendered famous as the tomb of the greatest character in the “Pantheon of History.” Does not this comparison of the virtue of the most powerful nation of antiquity, and the most powerful Christian nation

of modern times demonstrate that morality can exist without Christianity, and that Christianity has existed at least on one memorable occasion without morality.

But you are told that our ancestors brought with them the Common Law of England, and that Christianity is a part of the Common Law. There are in the books some sayings of the English Judges that Christianity is a part of the Common Law, and one of the most distinguished among those, who have held this doctrine, is the celebrated Sir Matthew Hale. But this Judge is one of those Judges, who have condemned persons for witchcraft, and the ermine of his judicial robes was stained with the blood of the innocent victims of superstition. Sir Matthew Hale would be as good authority to sustain a prosecution for witchcraft, as to sustain the present prosecution against the defendant, by establishing that Christianity is a part of the Common Law of England. Indeed Sir Matthew Hale was the great authority in Massachusetts to sustain the prosecutions for witchcraft which disgraced our early history. What is the Common Law of England? It is called the customs of immemorial antiquity handed down by tradition, among the English people. Now during the period of the existence of the Common Law, England has had all kinds of religion? Has the Common Law embraced all those kinds of religion? Are they parts of the Common Law? Yet one must be as well as another, or else none of those various kinds of religion are parts of the system. The Common Law is older than Christianity. In the earliest times of British history, the British religion was the dark superstitions of the Druids, the Priests of Mona's isle, who worshipped in the deepest recesses of the woods, and offered up the horrid sacrifice of human victims to the objects of their idolatry. Is this religion a part of the Common Law? When the Romans came they brought with them the Gods of Rome, and Cæsar, who found London a great place, and as Shakspeare tells us in Richard the Third, built the Tower, bore with him the God of War and the other Gods of his Country. Did the religion of ancient Rome become a part of the Common Law of England? When the Saxons invaded Britain, they brought with them their Gods of War, Woden and Thor? Did the Saxon religion become a part of the Common Law? Yet two days in the week in England and the United States, Wednesday and Thursday bear the names of their Deities, and have perpetuated the memory of these "fabled Gods" even to the present day. It was not till the reign of Claudius, the successor of Tiberius in whose reign Jesus Christ was crucified, that Christianity was

introduced into England, by means of the conversion of a noble lady, by a missionary from Rome. Up to that period surely, Christianity was no part of the Common Law of England. The religion of England has been often changed, and the dates of the changes, are well known, and some of them are recent affairs. But the Common Law is of immemorial antiquity, and as old as the native Britons, say the English law books, and therefore these various kinds of religion, introduced within legal memory, and can be no part of this system of immemorial antiquity. England after the introduction of Christianity embraced the Catholic religion. Was this religion a part of the Common Law? Then she adopted the religion of the Protestants. Did this become a part of the Common Law? Next she resumed the Catholic religion. Did this become once more a part of the Common Law? Next she resumed the Protestant religion. Did this too become a part of the Common Law? Then Presbyterianism became predominant. Did this become a part of the Common Law? Next the Puritan or Independent religion, became ascendant. Did this become a part of the Common Law? Afterwards, Episcopacy and the Church of England were resumed. Did this become again a part of the Common Law? Lord Bacon said the English laws and language became enriched by various foreign acquisitions, but this philosophical lawyer never said that the English law was enriched by the incorporation of various contradictory religions. The ecclesiastical history of England destroys the pretension, that Christianity is a part of the English Common Law, for if the great stream of the Common Law, has been receiving all the various kinds of religion among the English, Druidism, Roman Mythology, Saxon Idolatry, Catholicism, Protestantism, Episcopacy, Presbyterianism and Puritanism are all parts of the Common Law.

Gentlemen. What will be your astonishment when you learn, that all the pretensions of the English Judges that Christianity is a part of the Common Law, are founded on a gross blunder or a gross fraud. But this is the fact. The illustrious Jefferson has ably, fully and conclusively exposed the imposition. He has invalidated all the leading cases, relied upon by the Government in this case, to convict the defendant, by establishing the position that Christianity is a part of the Common Law. Jefferson thus demolishes the fraud or ignorance of the English Judges in relation to this matter in his celebrated letter to Major Cartwright, the Whig Patriarch of England.

I was glad to find in your book a formal contradiction, at length, of the judiciary usurpation of legislative powers; for such 'the judges have usurped in their repeated decisions, that Christianity is a part of the common law. The proof of the contrary, which you have adduced, is incontrovertible; to wit, that the common law existed while the Anglo-Saxons were yet Pagans, at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had ever existed. But it may amuse you to show when, and by what means, they stole this law in upon us. In a case of *quare impedit* in the Year book, 34. H. 6. folio 38. (anno 1458,) a question was made, how far the ecclesiastical law was to be respected in a common law court. And Prisot, Chief Justice, gives his opinion in these words. 'A tiel leis qu'ils de saint église ont en *ancien scripture*, convient à nous à donner crédençe; car ceo, common ley sur quels tous manners leis sont fondés. Et auxy, Sir, nous sumus obligés de conustre lour ley de saint église; et semblablement ils sont obligés de conustre nostre ley. Et, Sir, si poit apperer or à nous que l'évesque ad fait come un ordinary fera en tiel cas, adong nous devons ceo adjuger bon, ou auterment nemy,' &c. See S. C. Fitzh. abr. Qu, imp. 89. Bro. Abr. Qu. imp. 12. Finch in his first book, c. 3. is the first afterwards who quotes this case, and mistakes it thus. 'To such laws of the church as have warrant in *holy scripture*, our law giveth credence.' And cites Prisot; mistranslating '*ancien scripture*,' into '*holy scripture*.' Whereas Prisot palpably says, 'to such laws as those of holy church have in *ancient writing*, it is proper for us to give credence;' to wit, to their *ancient written* laws. This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this false translation into a maxim of the common law, copying the words of Finch, but citing Prisot. Wing. Max. 3. and Sheppard, title, 'Religion,' in 1675, copies the same mistranslation, quoting the Y. B. Finch and Wingate. Hale expresses it in these words; 'Christianity is parcel of the laws of England.' 1 Ventr. 293, 3 Keb. 607. But he quotes no authority. By these echoings and re-echoings from one to another, it had become so established in 1728, that in the case of the King *vs.* Woolston, 2 Stra. 834, the court would not suffer it to be debated, whether to write against Christianity was punishable in the temporal court at common law. Wood, therefore, 409, ventures still to vary the phrase and say, that all blasphemy and profaneness are offences by the common law; and cites 2 Stra. Then Blackstone, in 1763, IV. 59, repeats the words of Hale, that 'Christianity is part of the laws of England,' citing Ventr. and Strange. And finally, Lord Mansfield, with a little qualification, in Evans's case, in 1767, says, that, 'the essential principles of revealed religion are part of the common law.' Thus ingulphing Bible, Testament, and all into the common law, without citing any authority. And thus

we find this chain of authorities hanging link by link, one upon another, all ultimately on one and the same book, and that a mis-translation of the words '*ancien scripture*,' used by Prisot. Fich quotes Prisot; Wingate does the same. Sheppard quotes Prisot, Finch, and Wingate. Hale cites nobody. The court, in Woolston's case, cite Hale. Wood cites Woolston's case. Blackstone quotes Woolston's case and Hale. And Lord Mansfield, like Hale, ventures it on his own authority. Here I might defy the best read lawyer to produce another scrip of authority for this judiciary forgery, and I might go on further to show, how some of the Anglo-Saxon priests interpolated into the text of Alfred's laws, the 20th, 21st, 22nd, and 23rd chapters of Exodus, and the 15th of the Acts of the Apostles, from the 23rd to the 29th verses. But this would lead my pen and your patience too far. What a conspiracy this, between Church and State! Sing Tantarara, rogues all, rogues all. Sing Tantarara, rogues all!

Here you perceive a gross blunder or fraud in translating the words "*ancien scripture*," which mean merely ancient writings or old records, and in the case in which the expression was used, meant merely, church canons, parish records, and church books; has given rise to a string of cases in the English Courts, now imported into this free country, to put down the liberty of speech, the freedom of the press, and the rights of conscience. Here in an ancient case involving Church interests, the Court say, in ecclesiastical cases we give credit to the ancient writings of the Church, that is to the old records, parish records, tithe books, and things of that nature, as our Courts now do to bye laws of banks, and customs of merchants in mercantile concerns. This word "*ancien*," is perverted and mistranslated "*holy*." Upon this wretched hook hang all the English decisions, to prove that Christianity is a part of the Common Law. Upon this foundation, completely subverted by Jefferson, rests the Babel superstructure of the law Christianity of the English Courts. By such an imposture as this, have the English Courts armed themselves with the power to muzzle speech and chain the press in matters of religion, and thus they have sustained the cause of Church and State, by which our ancestors were persecuted, and by which the liberties of the English people are ground up between the millstones of secular and ecclesiastical power. Hence all this doctrine of the English Courts, that attacks upon the established church, are libels on Christianity, and offences at common law. All these authorities, as has been shown, depend upon a mistranslation of a single word, which has been quoted from one case to another. Yet

we are told even here, in this land of toleration, that such sayings are law to bind the freemen of the United States. We are now called upon to respect doctrines manufactured by a set of Judges, who, if you lived within their power, would authorize a proctor to take a tenth part of your income under the tithe system to pamper the luxury of the clergy of the Established Religion. Mr. Jefferson exposed the fallacy of these pretences, and he defies all the lawyers of England to contradict him, and none to my knowledge have dared to enter the lists with this champion of civil and religious liberty. Yet you are now called upon by the Government, to import and adopt this infamous fraud or blunder from the English Courts in order to convict the defendant of blasphemy. All the Judges and Clergy that sustain the corrupt government of England, cannot disprove this fraud, which Jefferson has exposed. It may be thought by some, that the authority of Jefferson is not to be received, because he has been too often falsely alleged in this State to be AN UNBELIEVER in Christianity. That is a calumny upon his reputation. He died amid the prayers of his friends and neighbors, and the blessings of his countrymen. He was a firm believer in the doctrines taught by Jesus Christ, as he understood them, and as he had lived, so he died, in the hope of a glorious immortality. He was as sincere a Christian as ever lived in the profession of the Unitarian faith, and he always acted upon the advice he gave his young friend, to "adore God," and "love his neighbor as well as himself and his country better than himself."

[The Judge here said that the character of Mr. Jefferson was not on trial, and it was unnecessary to go into it.]

Mr. Dunlap. I know that, but this is a peculiar case, and if any attempt to shake the authority of Jefferson's opinions in the minds of the Jury, is to be made here, where he has been so vilely slandered, I claim the right to remove that obstacle out of the way, and to defend to the extent of my ability his fame, so dear to a vast majority of his countrymen.

You perceive by the close and lawyer-like criticism of Jefferson, that all the cases in the Books were examined by him, except the later case depending on the authority of the old cases, which sustains the doctrine that an attack upon the Christian religion is a Common Law offence.

The law Christianity of England is found only in the Statutes made to protect England from the belief of Protestantism at one time, and from the belief of Popery at another time. From the earliest times down to the present, as any party has

acquired the power, it has passed Statutes to sustain their own doctrines and suppress all others. Will it be pretended that we have adopted these Statutes as a part of our Common Law? If we have adopted the law Christianity of England, then we have adopted her established church, her tithes, her bishops and sinecures; for the same argument which proves we have adopted a part, must also prove, we have adopted the whole. We have adopted their Ecclesiastical Courts, and the Courts of the Knights Templars and Hospitallers. To give you an idea of what sort of Courts these Ecclesiastical Courts were, which form a part of the law Christianity of England, I will read a note of a case in Lord Coke's Fourth Institute, which gives an account of a clergyman's suit against an independent farmer because he would not entertain the parson and his men, when they went through his yard, or suffer them to trespass on his grounds.

Also in the reign of queen Eliz. William Taylor clerk, parson of Springfield in Essex did implead William Massy gent. before the high commissioners for giving unreverent speeches to the minister, &c. for carrying his corn on holy days, for not suffering the parson and parishioners to come thorough his yard in rogation week in the perambulation, and not giving them a repast as usually he had done.

The law Christianity of England has grown not from the Common Law but from their bloody Statutes and tyrannical Ecclesiastical Courts—the creatures of Statutes; and so far from our ancestors bringing it with them, I thought it was what they quitted their country to escape from; I thought it was the scourge of the penal Statutes relating to religion and the Spiritual Courts of England waving over their heads, which drove the Pilgrims from the tombs of their fathers, and the birth places of themselves, and their children, first to Holland and afterwards to this country. I thought it was the law Christianity of England, against which they shook off the dust of their feet, as they parted from their native land, and bade it an eternal farewell. I thought they came here, to plant in the snows of the wilderness the standard of civil and religious liberty, far beyond the reach of the law Christianity of the English Government, and the tyrannical ministers of their cruelty the English Judges those honest translators, of the words "ancien scripture," into Holy Scripture, and the authors of the doctrine that Christianity is a part of the Common Law of England.

If we have adopted the absurdities of the Common Law, then we have adopted Sir Matthew Hale's doctrine of witchcraft, together with his doctrine that Christianity is part and parcel of the Common Law. We have adopted witchcraft which he was so blinded by bigotry and superstition, as to believe in, a crime of which no human being is capable of being guilty, and which is now abolished in England by Act of Parliament. As men made the crime, so they have abolished it. We must also have adopted the Common Law test by ordeal, by which the accused were thrown into the water, and compelled to walk barefoot on red hot ploughshares. In the water trial if they sunk and were drowned, then they were innocent, but if they could swim, they were pronounced guilty. So if they walked over the red hot iron unharmed they were declared innocent, but otherwise were pronounced guilty. This was the Common Law of England. Another of the absurdities of the Common Law, and which we must have adopted, if the doctrine contended for in this trial be correct, is that after a person charged with murder has been acquitted by a Jury the next relative or heir of the murdered person, may have his appeal against the accused, and put him on trial again. But the accused, in that case, might demand the trial by battle, to decide the matter in single combat between him and the appellant. This absurd law was in full force until 1819, when it was abolished by the British Parliament. In 1818 a person charged with murder, and acquitted on his trial, was afterwards put to the appeal by the nearest kin of the deceased, who demanded the trial by battle. The question came up, and the Judges, who say Christianity is a part of the barbarous English Common Law, solemnly decided that the Common Law was in force, and the party had a right to demand the combat. Mr. Rush, a distinguished citizen of this country, was at that time our Minister to England, and in his interesting memoranda, he states that he heard this question deliberately argued in the King's Bench, and the decision made that the parties must engage in single combat. The appellant being a small man, and the accused an athletic man, the former was obliged to withdraw the appeal, but had he also insisted in his Common Law right, the Court would have been compelled to appoint umpires, and prepare the lists for a regular duel. Yet at the same time, by the laws of the land duelling was a criminal offence, and if death ensued, the surviving party was chargeable with murder. Such are some of the beautiful consistencies of the Common Law which the Government are now urg-

ing upon you, as the authority under which you are to convict the defendant, and put him in the pillory, or on the gallows, for maintaining his opinions relating to religion.

Gentlemen. I have endeavored thus far in the course of this argument to shew, that the publications, which are the subject of this indictment, do not come within the Statute against Blasphemy, that the Statute is invalid, and that these publications do not constitute an offence at Common Law. We now advance, to the Constitutional ground, and an examination of the Constitutions of the United States and State of Massachusetts.

It was said that the Constitution of the United States, had adopted the Common Law, and the seventh article of the amendments of the Constitution relative to the trial by jury, and suits at common Law, as well as a decision in the Circuit Court of the United States, for the First Circuit, relative to the exclusion of a witness as incompetent on account of religious disbelief were relied on, to sustain the position.

There was a doubt from the first settlement of the colonies on the question whether the Common Law offences, were cognizable, in the Colonial Courts. An important case occurred at an early period in Connecticut, which is stated in the history of that Colony and is referred to by the learned Tucker, the American Commentator on Blackstone. Judge Tucker says a slave was indicted for inflicting a brutal, fatal, and degrading injury on his master's son.

The lawyers quoted the English Statute against maiming; the court were of opinion that Statute did not reach the colony, because it had not been passed in the general assembly. At length, however, the court had recourse to the vote of the first settlers at New-Haven, viz. that the bible should be their law, till they could make others more suitable to their circumstances. The court were of opinion that vote was in full force, as it had not been revoked; and thereupon tried the negro, by the Jewish law, "eye for eye, tooth for tooth;" and he suffered accordingly.

There is considerable doubt, how far the Common Law is a guide in the Courts of the United States in civil suits. But in respect to criminal causes, there is no doubt. There is no offence at Common Law in the jurisprudence of the United States. The people will not suffer American citizens to be punished in this country, by a foreign code of laws, the laws of a Government of which we have declared ourselves independent. The penal laws of the United States are all of home

origin, and of domestic fabric. There is no such thing known as an offence at Common Law, in the jurisprudence of the United States. The people of the United States, long since determined by an irreversible decree that English Common Law in relation to offences, should have no force in the Courts of our confederated Republic, and the opinions of those, who hold a different doctrine, are condemned as errors. This matter has been settled by the Supreme Court of the United States, which in an opinion delivered by a venerable and learned Judge of that Court, banished from the Tribunals of the nation, all Common Law offences. There are no witchcraft, no heresy, no blasphemy causes, and no law Christianity prosecutions in the Courts of the United States. The following is an extract from the opinion referred to, which may be found in the case of the United States, vs. Hudson and Goodwin, reported in the seventh volume of Cranch's Reports.

The Court, having taken time to consider, the following opinion was delivered (on the last day of the term, all the judges being present) by JOHNSON, J.

The only question which this case presents is, whether the Circuit Courts of the United States can exercise a common law jurisdiction in criminal cases. We state it thus broadly because a decision on a case of libel will apply to every case in which jurisdiction is not vested in those Courts by statute.

Although this question is brought up now for the first time to be decided by this court, we consider it as having been long since settled in public opinion. In no other case for many years has this jurisdiction been asserted; and the general acquiescence of legal men shews the prevalence of opinion in favor of the negative of the proposition.

Thus you see that the Supreme Court of the United States, in accordance with the most decided expression of the opinion of the people on this subject, repudiates all claim of jurisdiction over Common Law offences.

What provisions on the subject of religion are contained in the Constitution of the United States? There is but one on this subject, and that is the glorious provision in the First Article of the Amendments, which is as follows.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Here in connexion, with the security of the liberty of the speech, and the freedom of the press, is the inalienable security of the rights of conscience. The Constitution of the United States so far from adopting the Christian Religion, has restrained Congress from establishing the Christian Religion, and prohibiting any other religion; and the principle of universal toleration, is protected by the *Ægis* of the Constitution. Away then, with the suggestion, that the United States have adopted the Common Law, and with it Christianity as a part of that system. It is a political heresy, in opposition to the sentiments of the people, and contrary to the true Constitutional faith, for the Constitution of the United States, has never adopted the Common Law of England relative to offences, and so far from adopting the law Christianity of England, Congress is deprived of the power to adopt it by the noble provision, which forbids that the National Legislature should establish any religion, or prohibit any religion.

The Constitution and laws of the United States, so far from sustaining this Statute, against Blasphemy actually destroy its validity. By the Constitution and laws of the United States, persons of every religious faith, may be admitted as citizens. The oppressed of every political sentiment, and the persecuted of every religious faith, may here find a refuge, in this land of civil and religious liberty. Here they may repose under their own vines and fig trees, and there are none to molest or make them afraid. This Statute of Blasphemy is opposed by the Constitution and the laws of Congress on the subject of naturalization, and therefore is void, for no Jew, no Gentile, none, but a Christian, and a believer in the established faith which this Statute establishes can live in safety under this Statute. None but a Christian, and a Trinitarian Christian, can enjoy his religion under this law. The Statute is therefore now attacked here on the ground that it conflicts, with the naturalization laws of the United States, and restrains the rights and privileges which these laws secure to naturalized citizens of every religious profession or sentiment. This point, that the Statute conflicts with the naturalization laws of the United States, is now argued before this Tribunal. If a verdict shall be rendered here against the defendant, it will be argued in the Supreme Court of the State, to which the cause will be appealed. Should the defendant there fail, he will transfer the cause by a writ of error to the Supreme Court of the United States, when this point will be argued at the Capital, in the presence of the nation. If the deep excitement now prevailing this crowded

assembly, shall be extended, like the expanding circle on the waters, made by the stone thrown into the lake, till it shall affect the whole people of this vast Republic, to the farthest extent of our empire, the blame must rest on the authors of this ill omened prosecution. Gentlemen : I entreat you for the sake of the reputation of the State, the country and the age in which we live, suffer not this cause, to proceed further, put an extinguisher upon it, by your verdict in favor of the defendant.

Let us now examine the glorious Constitution of the renowned Commonwealth of Massachusetts. It is said, that it has adopted Christianity, and reliance is placed on various passages of the instrument, to maintain this ground. Let us examine these passages. In the first place, we are referred to the religious Test Oath or subscription in the Constitution, which the Governor, Lieut. Governor, Counsellors, Senators and Representatives were formerly required to take, and which was as follows.

"I, A. B. do declare that I believe the Christian Religion, and have a full persuasion of its truth."

The misfortune of the argument resting on this Test Oath and subscription, is, that it proves the opposite of what it was intended to establish. If the insertion of this Test Oath and subscription in the Constitution, incorporated the Christian Religion, then striking that Test Oath and subscription out of this instrument, must have stricken out Christianity, and by the doings of the Convention of 1820, ratified by acclamation, by the people of this Commonwealth, this Test Oath and subscription was struck out of the Constitution. The following oath is now taken by public officers.

I, A. B., do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof, So help me God."

Another clause relied upon to prove that Christianity has been incorporated into the Constitution, is this provision.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law ; and no subordination of any one sect or denomination to another shall ever be established by law.

But the same misfortune attends the argument founded on that passage, as that respecting the religious Test Oath, it has also been struck out of the Constitution. There has been a

late amendment of the Constitution. This amendment was at length carried before the people after a long and persevering struggle on the part of the House of Representatives of successive Legislatures, against the opposition of the Senate. The people adopted it, almost unanimously. The vote of the people on the adoption of this amendment, which abolished the tithe system, or the system of a compulsive support of the clerical profession in this Commonwealth, has not been yet officially promulgated; but it is well known. The result has been proclaimed in the thunders of the ballot-box, and some thirty thousand votes of the people have ratified the amendment, with a meagre opposition, of only some two or three thousand votes against it. In this amendment, the words are not as formerly in the Constitution, "Every denomination of Christians;" but the words are, "Every denomination." The word "Christians" was struck out. The Jew, the Mahometan, the Pundit, the Bramin, the Chinese, the Deist, are now all equally under the protection of our Republican Constitution, and equal laws, with the Christian. The argument therefore weighs in the scale of the defendant, not that of the Government, for if the insertion of the words "Christians" in the Constitution, adopted the Christian Religion, then, Christianity disappears from the Constitution, when that word "Christians" is made to vanish by the sovereign will of the people.

Gentlemen. There is a clause in the Constitution, which proves that we are indeed a Christian people, and which has mingled the mild spirit of the Christian Religion, with the republican spirit of our political institutions. It is not so much those provisions of the Constitution which have been read to you, by the Counsel for the Government, as that which has not been read to you. It is that provision, which emancipates the people from the shackles of tyranny in religion which mankind had worn for ages, that provision which abolished forever all penal laws and penal prosecutions on the subject of religion, and declared in the most solemn manner, by the voice of the Sovereign people, that no subject shall be hurt, molested or restrained in his person, liberty or estate for his religious profession or sentiments. This is universal toleration, the vital principle of Christianity. Does not the Gospel of Jesus Christ proclaim "On earth peace, good will towards men?" Jesus Christ said, "And I say, if any man hear my words and believe not, I judge him not, for I came not to judge the world but to save the world." If the Founder of our Religion would not judge, nor condemn even the unbeliever, who heard his voice, will the

Court and Jury adventure to assume a jurisdiction, which was declined as alien to his religion by the Author of Christianity? Again says the Teacher, "My kingdom is not of this world," and he utters the warning admonition, which all his history has verified, to the framers of penal laws, and the authors of penal prosecutions on the subject of religion, "Judge not that ye be not judged, for with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured unto you again." The framers of our Constitution therefore acted as good Christians, as well as good Republicans, when they proclaimed the great truths of religious liberty, in the declaration of the Bill of Rights, that no subject shall be hurt, molested or restrained, in his person, liberty or estate, for his religious profession or sentiments.

Even in the case of the false one, among the disciples, who betrayed his Master with a perfidious kiss, no sentence, no punishment was awarded against him, it was merely declared that it had been good for that man if he had not been born. Neither earthly vengeance, nor the curses of Heaven were invoked upon his head. He was left wholly to the terrible accusation of his own conscience, and he executed judgment on himself. Did not Peter deny Christ, and according to this Trinitarian Statute, deny God? He denied his Master with imprecations. He had been the companion of Jesus Christ, and an eye and ear witness of his "signs and wonders." But Peter was not condemned. The weakness of man, "the infirmity of human nature" which by one of our early Massachusetts laws against Blasphemy, is declared to be no excuse, was considered in extenuation of the conduct of the offending disciple. Peter was but a man, and the strength of his character was subdued by the formidable power of persecution. He saw his Master in the power of the Roman Soldiery and the corrupt and bigoted Priests among the Jews, stimulating their fanatical countrymen, to the destruction of the Author of the Gospel Reformation. In that hour to try his soul, he faltered and denied his Master. So far from being condemned, he was forgiven. Even the flock was committed to his charge, and it was declared that upon Peter as upon a rock should the Edifice of the Christian Church be built.

I again enquire, will this Court or any enlightened Christian Tribunal, disregard the pure precepts, and the perfect example of universal toleration, taught and displayed by Jesus Christ? Will they who cannot know the heart of man, undertake to *punish* the prisoner at the bar, for declaring that he does not

believe in Christ, when even the disciple was forgiven, who, with imprecations denied Christ, to whom he had just before pledged the most solemn assurance of his inviolable fidelity?

Let us admit that our Constitution does adopt the Christian Religion. It is adopted in the incorporation of the principle of universal toleration, the great principle of Christianity. It is adopted in the declaration in our Bill of Rights, that no subject shall be hurt, molested or restrained in his person, liberty, and estate, for his religious profession or sentiments.

Let us now examine that portion of the Bill of Rights, which bears upon this subject, and which was intended by the framers of this Constitution as a political ordinance, to fence out the evils, by which other countries, and our own in former times, had been inundated in consequence of penal laws, and penal prosecutions on the subject of religion.

The following is the Second Article of the Bill of Rights.

It is the right, as well as the duty, of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience: *or for his religious profession or sentiments*; provided he doth not disturb the public peace, or obstruct others in their religious worship.

There are three propositions in this Article. The first declares that it is the right and duty of men to worship the Supreme Being. The second contains a declaration that no subject shall be hurt, molested or restrained in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience. The third contains a declaration, that no subject shall be hurt, molested or restrained in his person, liberty, or estate, for his religious profession or sentiments. The only restrictions, imposed upon the full and perfect enjoyment of these rights, are, that the public peace shall not be disturbed, nor others obstructed in their religious worship. Is not this a correct statement of the contents of this Article? How shall this article be construed? It is not to be looked at and peered over, by the narrow optics of a technical drudge and mere hack in the trade of the law, hunting after syllables in a penal statute. It should be viewed with the eye of philosophy, and in the clear, broad light, in which Statesmen of expanded minds, are accustomed to examine subjects of the greatest interest to mankind. This is a great

Ordinance of a glorious People, then raising the noble edifice of freedom, while they were consummating the most magnificent event on the scroll of history, achieving a Revolution, which trampled in the dust the chains of political and superstitious bondage, in which mankind had been bound for countless ages. They were rearing the Temple of Freedom, and one of the main pillars is, the prohibition of all penal laws and penal prosecutions on the subject of religion. This was manifestly the object of the people and therefore this provision of the Bill of Rights should receive the most liberal, and enlarged construction, that which philosophy and philanthropy approve, and which best promotes the just and enlightened objects of the framers of the Constitution.

This sacred instrument is not to be tampered with, nor are the objects of the people to be defeated, by the sharp quibbles of legal construction, annulling its glorious provisions. It was a maxim of Jefferson that "error of opinion may be safely tolerated, when reason is left free to combat it." This was the sentiment of a Christian philosopher, and a Republican statesman, and it was the sentiment of the wise framers of the Constitution of this Commonwealth. No narrow, illiberal astute construction of this article of the Bill of Rights, will be tolerated by the country or the age in which we live. The words are plain, and the language is explicit which proclaims the principle of universal toleration. If there were a doubt, the most liberal construction should be adopted, for that is in accordance, with philosophy, philanthropy, the genius of our institutions, and the character of our people. What did the people, who sent the Delegates, in the Convention desire? Did they not expect a Charter of freedom, at their hands? They were not disappointed, and from the ruins of Monarchy in Massachusetts a Republican Government rose to the admiration of mankind to sustain in politics and religion, the undeniable rights of man. What did the authors of the Constitution intend to secure in this provision? It was freedom, perfect freedom in the maintenance of opinions in religion, unrestrained by any other than these restrictions, that the public peace is not to be disturbed, nor the freedom of the religious worship of others, obstructed.

What is the meaning of the words "religious profession or sentiments." Do they not mean profession or sentiments in or respecting religion? Can any intelligent and honest mind deny, that this is the fair, true and only meaning of these words? The Bill of Rights then protects the subject, from being hurt, molested or restrained in his person, liberty or estate for his

religious profession or sentiments ; or his sentiments in or respecting religion, whatever they may be.

Are we to be told that this Article only protects the rights of those, holding what in the opinion of the Court and Jury "are religious profession or sentiments" and that the defendant's "profession or sentiments" are not religious, but irreligious? Would not this be a despicable quibble, discreditable to the mind and heart which should approve it? It would destroy the whole object of the provision in the Bill of Rights, and in an instant annihilate the bulwark of liberty, which our fathers intended should stand for ages, a monument of their wisdom and virtue, and the protection of the rights of their children to the latest generations. Such a miserable construction would annul the Bill of Rights, for it would leave it in the power of the Legislature, to punish by penal laws, and in the power of the Courts to harass by penal prosecutions, all who might maintain any profession or sentiments in or respecting religion, which the Legislature and the Courts might choose to consider not religious, but irreligious profession or sentiments. Under such a petty-fogging construction of that great Charter of our liberties, won as was the English Magna Charta by the sword, the people of Massachusetts would be no better protected against persecution on account of religion, than the people of Spain are under the Inquisition, which Bonaparte destroyed, but which by the power of Great Britain and the Holy alliance was revived. Such a construction would leave it in the power of the Legislature and the Courts, to say what were, or were not religious profession or sentiments, and thus let in the flood of mischiefs, which the Bill of Rights was made to keep out. An Orthodox Legislature, might consider the Unitarian or Universalist as not of "religious profession or sentiments," and an Unitarian or Universalist Legislature, might consider the Orthodox, as not of "religious profession or sentiments." You see therefore that such a construction would be a mere quibble, and if sustained, all the barriers of toleration, all the safeguards of the Constitution, which is a law to the Legislature, and the Courts would be at once swept away and destroyed. None would be protected but those, whose "religious profession or sentiments," might be in accordance with those of the Legislatures and Courts.

If none are to enjoy protection from being hurt, molested or restrained in person, liberty or estate, except those, whom the Legislature and the Courts may consider to be of "religious profession or sentiments," the provision in the Bill of Rights is

altogether superfluous, for those who are of "religious profession or sentiments" according to the opinion of the Legislature and the Courts, never can be in danger of being hurt, molested or restrained, in person, liberty or estate for their "religious profession or sentiments," and therefore need no protection. They need no shield against religious persecution, for they are already guarded by the shield of the Government. They do not punish, even in Spain, those who hold to the "religious profession or sentiments" of the Government and people. They only burnt in the Inquisition the heretics, those who were not of the "religious profession or sentiments," which the Government approved. It is not for those who hold the "religious profession or sentiments" of the Government and the people, that the broad shield of universal toleration is provided in the Bill of Rights, for they are invulnerable. It is for those, who hold a profession and sentiments which are not considered by the Government and people as religious, for those alone are in danger of persecution. This Bill of Rights is a shield for the weak, not a weapon of persecution for the hand of the strong. It is intended for those who alone need protection—those who profess unpopular sentiments respecting religion.

The Constitution intended to protect all of every belief and unbelief respecting religion. The framers of the Constitution did not intend to have any Inquisition here. They did not intend that their Legislature and Courts should have any power to interfere, in what they have no right to interfere, in matters of belief or unbelief respecting religion. They intended to have no heresy laws, and no heresy prosecutions, and therefore abolished and prohibited all penal laws and penal prosecutions on the subject of religion in this Commonwealth. Who shall say what are religious profession or sentiments. Among Catholics, the Protestant religion has been holden to be heresy. The same condemnation, upon the Roman Catholic religion, is pronounced by Protestants. Do not the Calvinists and Unitarians mutually accuse each other of not maintaining religious sentiments? The moment the toleration principle, which we have been examining shall be quibbled away, the most glorious provision of the Bill of Rights will vanish, and in every penal prosecution respecting religion, the question must be settled, what constitutes religious profession or sentiments. One Court and Jury will set up one standard of faith, and another Court and Jury a different standard,—thus our Constitution will be subverted, and the rights of conscience forever prostrated.

Religious sentiments; All men cherish religious sentiments, clear or confused, according to their various degrees of understanding, habits of reflection and means of knowledge; and the framers of the Constitution intended to protect from penal laws and prosecutions those of every varying religious profession, and all of every sort of sentiments respecting religion. They intended to protect all of every belief and of every unbelief relating to religion.

Gentlemen. There is an established rule, of construction of all written laws from the construction of a Statute, on the most unimportant subject up to the Ordinance of the people, the Constitution, which may assist our enquiries. It is thus stated with admirable clearness by one of our most distinguished American juridical sages, in the ninth volume of his Digest of American Law. p. 578.

With regard to the different parts of a statute, there is one general rule of construction; that is, the construction of each and every part must be made on a full view of the whole statute; and every part must have force and effect, if possible; for the meaning of every part is found in its connexions with the other parts; and it cannot be believed the legislature intended any part of the statute should be without a meaning, or without force or effect. These rules are not peculiar to statutes, but hold in regard to wills, deeds, and all instruments where the question is, What did the maker mean. Each ought to be so construed, if it can be, as to prevent any clause, sentence, or word, being superfluous, void, or insignificant; for this obvious reason, no maker of either can be supposed to mean that any part, clause, or word, shall be insignificant, superfluous, or void.

You see that every part of a Statute shall have effect, and each part shall if possible, be so construed, as to give to the whole an effect, and to prevent the rendering any phrase or word ineffectual, superfluous and void. Such is the rule of construction, to be applied to the most inconsiderable Statute, passed in the most hasty manner by the Legislature.

Such is the respect paid to the authority of the most unimportant laws, that it shall not be supposed, that the Legislature has used words, without a meaning, and therefore a meaning shall if possible be given, to all the words of the law. With far greater force does this rule of construction apply to the Constitution, a Supreme law of the sovereign people to the Legislature and the Judiciary. Was not the Convention, which framed the Constitution of our Commonwealth, one of the most august

assemblies which ever was convened under the sun? Were not their doings among the most important events recorded on the page of history. It was the first or one of the first assemblies of the people by their representatives in the world, for the purpose of framing the social compact of government, and establishing a free Constitution. Till the American Constitutions were formed, the world never saw a Constitution, of Government,—a Supreme Ordinance of the people, as a curb to the Legislature and a bridle to the Judiciary. The British people have no Constitution and never had any. They boast of their Magna Charta, Bill of Rights, and Habeas Corpus, and other laws for the protection of the subject against the power of the Government. But these bulwarks of freedom may all be swept away, by a single statute, for it is a maxim among them, that their Parliament is omnipotent. A combination of the King, Lords Temporal, Lords Spiritual, and the Commons can make any law however tyrannical, and repeal the wisest and most humane law in the Statute book. The coalition against the people of Church and State, of the King with the Bishops interested to secure their titles and tithes, with the Nobles interested to maintain their usurpation in violation of the equal rights of man, and with a corrupt House of Commons interested to sustain by venal votes all sorts of corruption, is unrestrained by any written Constitution of Government. The only check is public sentiment, which is now speeding the cause of reform, by causing the Lords Temporal and Spiritual to tremble in their seats, and the Monarch to shake on his throne, at the hand writing on the wall, the manifestation of the will of the people, in favor of a complete and radical reformation. That reform will drive the Bishops, the inflexible enemies of freedom, from the House of Lords, and finally destroy the unholy union of Church and State, which places religious teachers in the post of legislators, by which the land of our ancestors has been so long and so cruelly afflicted. Our revolutionary fathers determined to have no legislative or judicial usurpations in this State. They intended that there should be in Massachusetts no political omnipotence, except the sovereign power of the people. They therefore established this Constitution of Government, and every word of the Ordinance of the people is to have its full effect, for every word of the Bill of Rights, is the deliberate expression of the will of the people. Apply this principle of construction that every word is to have its effect, to the clause in the second article of the Bill of Rights. The words of this clause are as follows.

And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; *or for his religious profession or sentiments*; provided he doth not disturb the public peace, or obstruct others in their religious worship.

In the first place all who worship God are protected in the most ample manner. Does the clause stop there? No, the Bill of Rights proceeds further. After that come these words "*or for his religious profession or sentiments.*" This extends the Constitutional safeguard, even to those, if there be such on the face of the earth, who do not worship God. These latter words are separated from the former phrase in the clause, by the disjunctive conjunction "*or*" which is used to distinguish a clear separation from or an "*opposition of meaning*" to the class of persons before described. If this be not so, these words "*or for his religious profession or sentiments*" are without any meaning, and altogether superfluous. All who worship God according to the dictates of their consciences, are first protected. Then to remove all doubt, and to guard against vile quibbling in order to destroy the glorious provision of the Constitution, even those, who do not worship God, if there can be any such, are also protected. These words or "*for his religious profession or sentiments,*" must have the effect to throw the Constitutional shield of toleration over all sorts of unbelief, or else they are a dead letter, and must be considered, to have been used, by the framers of the Constitution, without a meaning. This is not to be supposed, unless one of the best established rules of construing laws, be violated in a case where it should be most regarded. No one can believe or dare declare, that the words "*or for his religious profession or sentiments*" have no meaning, and are ineffectual, superfluous and void. If they have a meaning they extend the principle of toleration, as it should be extended, in every Constitution of a people professing to be free, to the protection against penal laws and penal prosecutions of all, whatever may be their profession or sentiments respecting religion.

In the course of this trial, it has been intimated, and it will probably be again enforced, that there is a nice and delicate distinction to be made, in considering the privileges secured by this Second Article of the Bill of Rights, between the right to enjoy opinions, and the right to maintain and attempt to propagate them. It may be contended, that the Constitution permits a man to believe what he pleases in relation to religion, but does not protect a party, in promulgating and maintaining his

sentiments. Such a distinction is more nice than wise. It refines away the Constitution, and renders it a mere cobweb, not a substantial bulwark of the liberties of the people. What sort of toleration would this be? What sort of protection would such a construction of the Bill of Rights secure? Such a construction renders the Constitution a mere mockery, for a man does not need the Constitution to protect him in the enjoyment of his secret opinions. In the countries of the Inquisition, even in its dungeons, the enjoyment of secret opinions, cannot be restrained, and if such a construction can be sustained, we are no better secured in this matter, in Massachusetts, than are the subjects of the most absolute government on earth. A person needs protection for his avowed, not his concealed opinions. And avowed opinions or sentiments in or respecting religion, are those alone which need protection, and which are protected by the Constitution. The Constitution will not admit of an absurdity like this, that the maintenance of one's profession or sentiments in religion is not within the protecting clause. It positively declares, that no subject shall be hurt, molested or restrained in his person, liberty, or estate, on account of his religious profession or sentiments, that is, on account of the religious sentiments which he professes and avows. The Constitution sanctions no such absurdity. Its positive declaration is, that no person shall be hurt, molested or restrained, for his opinions or sentiments on religious matters? Can he be hurt, molested, or restrained, for opinions which are kept secret? Is that the meaning of the Constitution? Surely not. A person is not to be hurt, molested, or restrained for promulgating his sentiments relating to religion in any way he pleases, provided only, "he doth not disturb the public peace, or obstruct others in their religious worship." I do not defend the propriety and expediency of the maintenance of the sentiments the defendant may hold in religion, for I stand here merely to maintain his strict, legal and Constitutional rights, and thus to defend him against this prosecution. But, by the Constitution, he is not to be hurt, molested, or restrained, in person, liberty, or estate, for attempting to promulgate his sentiments respecting religion. If he have a right to hold those opinions, he has a right to make them known.

"To speak his thoughts is every freeman's right."

On this point let me read to you, the orthodox doctrine of orthodox Christians on the subject of religious freedom. It is the true doctrine, the doctrine of liberty of conscience guaranteed by the Constitution. The opinions of the Orthodox,

on this subject, is thus proclaimed by their great Champion in this State, Professor Stuart.

* * * "We mean that the Mahometan even, and the Jew, and the Deist, as well as the Christian, should have the liberty of worshipping in his own way among us, so long as they demean themselves peaceably, and do not invade the rights of others. We know of *no exception* to participation in *civil and social* rights, and *the right of worshipping in our own way*, or of even *not worshipping in any way*, under a government that is free in the sense that we would have it; and all this without any abridgement of the rights of citizens, without any civil disabilities." * * *

"We not only believe that all men should be left free to form their religious opinions, without any civil penalties or disabilities, but we maintain most fully, that *when the religious sentiments of any one are formed, he has a right to propagate them, to defend them, and to support them, by his efforts, his pen, his property, or his influence.*"

In all this we understand of course, that in so doing he does not slander or abuse his neighbor, nor deny him any civil or social right as a member of the community, nor hinder him in the lawful exercise of it. Of the former of these faults the civil law justly may take cognizance. Against the latter, the law of love and of doing as we would be done by, protests.

We believe most fully, that men have a right to propagate their religious sentiments, if they confine themselves to argument and persuasion, and do not appeal to abuse, which is a crime in the eye of the civil law, it being manifestly against the peace of the community. We are well aware, indeed, of the mischiefs which may result from a free right to propagate religious, or rather *irreligious* sentiments of any kind. We know too well, what incalculable evil the publication of such books as the *Age of Reason*, the works of Boulanger, of Voltaire, and of La Mettrie have occasioned. We shudder at it as one of the most dreadful of evils, inasmuch as it takes hold on *eternity* and not merely on time. But dreadful as it is, we regard as a still greater evil, the power of civil government, or of any ecclesiastical tribunal, to suppress the publication of books at its option. To-day it may choose, as Frederic the Great did, and the French Directory after him, to circulate widely Voltaire, and D'Alembert, and Rousseau; or to-morrow it may spread wide the poison of some heresy lurking under a Christian name; while, at the same time, it inhibits all antidotes to these tremendous evils. The liberty of the press, *the unreserved liberty of it*, is in our view fundamental to religious liberty. If the press be, as it doubtless sometimes is, a most terrible instrument of doing evil; it is also one of the most efficient of all instruments in doing good. We would forever leave it open and free to do good; and if the liberty to do evil must come along with this, (and we do not see how it is possible to prevent it,) why then the friends of truth must trust to argument, to reason, to conscience, and to God, for triumph over

the powers of darkness. And this they may do, without peril to the cause in which they are engaged.

If I have not liberty to propagate my religious sentiments, provided I do it by reason, and argument, and persuasion, and with decorum, then I am not free. Liberty in its highest and most precious sense is denied me. As an immortal being, I look forward to the time when myself and all around me are to enter on the "recompense of reward," a final and eternal one. If I am serious in my religious views; if I am well persuaded that they are true, and this after repeated and protracted and patient examination; then I must be utterly destitute even of the spirit of common humanity, if I do not desire others to participate with me in this persuasion."

Professor Stuart says, "That the friends of truth must trust to arguments, to reason, to conscience, and to God." He does not say the whipping post, the pillory and the gallows. He laments with the strong feelings of a pious man the mischiefs resulting from propagating irreligious sentiments, but he holds like a wise man, that the evil, great as it is, is much less, than would be the consequences of an attempt to suppress by law, the propagation of sentiments, which the Legislature may consider irreligious. We regard as a great evil in any country the power of the civil authorities to suppress books on religion. The unreserved liberty of the press in promulgating sentiments respecting religion, we hold to be a vital principle of liberty, and essential to the support of religion. We view with horror the proceedings of those Governments, where nothing is allowed to be published, that does not conform to the established creed. The liberty of the press is essential to the preservation of religion itself. It is a fundamental principle of religious liberty. Without it there is no safety, for though a Christian Legislature might now proscribe none but infidel books, you might have an infidel legislature, which would proscribe all but infidel books, and suppress religion by law, on the same principle by which our Legislature undertakes to suppress irreligion by law. A wise man will consider what may happen, and extend his speculations beyond the smoke of his own chimney. Such is the philosophic view which Professor Stuart has taken of this question. He sees how power may shift from one sect to another, for he himself belongs to a sect, that has not now the predominant political power it once possessed in this Commonwealth. He looks into history and draws instruction from its lessons.

It becomes you, Gentlemen, and this Court, to profit by these lessons. You may fancy that you are doing God service by convicting the Defendant under this unconstitutional law; but, if you begin now, what may be the consequences of the precedent, you will establish? If you condemn a great heresy to-day, by a prosecution and a verdict in a court of law, you may condemn a less heresy, in the same way, to-morrow, and so on, until you find Judges and Jurors constituting an Inquisition upon men's belief, in all matters of religious concernment, and every deviation from the established creed rendered punishable. The plain, simple truth laid down in the Constitution, is, that the civil tribunals have no power, no right to enquire into or punish any errors of opinion in relation to religion. Were it not so, the ruling power might put down Christianity itself, if ever Christianity should happen to be in a minority here, as it has been under other governments. These are the principles which Professor Stuart holds, and he establishes his argument by the second article of the Bill of Rights. He does not mean to countenance a law to crush the deist or infidel, to-day, which to-morrow may be used to crush himself. His sentiments are as beautifully expressed, as his reasoning is unanswerable, and though I differ, by the whole heavens in religious creed, from this learned and eloquent divine, I cannot too warmly express my admiration for his noble defence of religious liberty, and for which I shall ever regard and revere him. He plants himself on the Constitution, which throws its protection alike over all sentiments relating to religion, and leaves all matters of belief, things between a man and his God, to the decision of the only proper tribunal, that which alone knows the heart.

Be cautious then, Gentlemen of the Jury, how you do, what may seem to be a good thing now, but which may lead to the most fatal consequences, adverse to the very religious cause, you may desire to sustain by your verdict. Beware of the first step in religious persecution, "t'will be recorded for a precedent." It was said in the Roman Senate, "*Omnia mala exempla ex bonis orta sunt*," all bad examples take their rise in good beginnings, in perverting justice from good motives and wresting the law to do a wrong for the purpose of promoting a good object. All religious persecutions, have had for their pretext, the desire to honor religion and punish error and heresy supposed to be crimes. This is the danger of establishing a bad precedent. We are in danger of being misled even by our virtues, and while we are seeking to advance

the cause of piety, are violating justice and endangering religion. Suppose you condemn this man to-day, for his disbelief of Christianity, you may doubtless feel consolation in the reflection that you have done your duty. Again you are summoned as Jurors, and the deistical sceptic comes next to the bar, to be tried for heresy, under this law, and he too is condemned. The disciple of Confucius, the Chinese philosopher is next arraigned, and the precedent of your verdict in this case is used effectually to condemn him, for not worshipping the God we worship. The pure minded Bramin, who may have come here, in the sincerity of his heart to teach us his religion, as we send missionaries to convert him to ours, is, in his turn, denounced for denying God, and the Christian faith; and upon the same precedent by which you convict this defendant, the Jury must convict the Bramin. The next is the Universalist. He denies the "final judging of the world," and is within the very words of the Statute of Blasphemy, and its punishments of the pillory and the gallows are his sentence. The Unitarian follows and another and another advances in the gloomy array, of the objects of religious intolerance. Last comes the author of this prosecution, who perhaps as a reward for his zeal in the cause of religion, will receive the favor promised to Ulysses in the cave of Polyphemus, of being the last victim to be devoured.

Gentlemen. We have already repeatedly referred to the Constitution of the United States. Let us take a glance at this instrument. Since the adoption of the Constitution of Massachusetts, the Constitution of the United States has been established as the Supreme Law of the land. That Constitution, we have seen, has not a word in it on the subject of religious or irreligious belief, except in the amendments which declare that Congress shall make no law to establish or prohibit religion. But the Constitution, as we have also seen, declares that Congress shall have power to establish a uniform rule of Naturalization. Congress have done so, and under the Naturalization laws citizens of other countries of every religion, and of no religion, are admitted to become citizens of the United States. The Pagan, the Mahomedan, the Jew, the Gentoo, the disbeliever, are all entitled to be admitted to the rights of citizenship. No qualification, as has been observed, is required, but a good moral character as the political orthodoxy; of attachment to the principles of the Constitution of the United States. If then, any man be admitted a citizen of the United States, under this law, is he not entitled to bring with him and

profess his religious sentiments? Has he not a right to propagate his opinions, as much as others who differ from him have to disseminate theirs?

The Statute of Blasphemy in this State, not only violates the Constitution of the Commonwealth, but it cannot stand, consistently with the Constitution of the United States, and the laws of naturalization under that Constitution. Do we mean to entrap men into becoming citizens, under the Constitution of the United States, which proclaims the principle of universal toleration, and when they come to reside within a particular State, shall we place them in the pillory, or on the gallows, for professing their sentiments relating to religion? Suppose a Mahomedan be naturalized. The Constitution asks nothing about his religion. He is admitted a free citizen of the United States, with all the legal rights of all other citizens. He then erects his Mosque, and preaches, there is but one God, and Mahomet is his Prophet, and he denounces our religion, as we denounce his. Has he not a right to do so under the Constitution and laws of the United States, and shall a law of this State hinder, molest, or restrain him? The Jew establishes his Synagogue, the Mahometan erects his Mosque, the Chinese sets up his Pagoda, the Pundit rears his Temple and each proclaims his God, and denies the God of every other religion. What are our rights as Christians? Are we tongue-tied and muzzled? Cannot we deny the God of the heathen? Cannot we ridicule their religion, and expose its worshippers to contempt? But if we can assail these opinions, deny the false Gods, reproach their prophets, as impostors or enthusiasts, and pronounce their books of religion the legend of falsehood, they must have a corresponding right under our Constitution to assail and impeach our religion in turn. The Mahomedan asserts the truth of the Koran, and denies the Bible. The Jew contends for the Old Testament as the only Holy Word of God, and denounces the New, as the work of men. Surely we have a right to expose the folly of his opinions, and ridicule his ceremonials, and sacrifices, and if so, he must have a right to oppose with equal zeal our baptism and sacraments. The moment we attempt to trammel others, we destroy our own rights to expose the errors of others and to maintain the truth of our own sentiments respecting religion. If it be not so, then is the Constitution a snare, instead of a protection. It invites the stranger to come here, to become a citizen, and yet he is to be exposed to punishment, if he dares to promulgate his opinions in matters of religion. Do we in

our writings, or in our pulpits, spare the Jews? Is it right that we should be deprived of the power of condemning any false religion, or the worshippers of false Gods? But if we claim the right to proclaim our sentiments, we must concede the same right to others, who are equally citizens with ourselves. We cannot under our Constitution deny the right of others to maintain their profession and sentiments respecting religion, without renouncing on our part our most precious privileges, for they must have the same right to promulgate their opinions, which we claim for ourselves. Nor need we fear the consequences. It is our boast that our Church is founded on a rock, that our religion will stand the test of enquiry, and that it cannot be shaken by all the winds and storms of Pagans, Mahomedans or Infidels.

How would you proceed in the case of a Jew, who should be arraigned for Blasphemy? The Jew believes that the Messiah has not yet come, yet he cannot preach that doctrine without violating this Act against Blasphemy, because in so doing he must deny, the authenticity of the whole of the New Testament, and thereby expose it to contempt. The Constitution guards against all such absurdities as these, by protecting all believers or unbelievers alike.

Gentlemen. I might extend these illustrations without end ; showing the folly of any attempt to legislate upon men's faith in religious matters, for the theme is inexhaustible. Enough however, has been said on this head, to shew conclusively, as I think, that you cannot sustain the Constitutions of the United States and the State of Massachusetts, and this Statute together. One or the other must yield, and it becomes a most important matter for you to determine, on your consciences, whether you will be governed by the Constitutions of the United States and of Massachusetts, or by this Statute in direct violation of both these Constitutions.

Should you convict the defendant, the consequences of your verdict will not stop here. In defence of the principle of religious freedom, the Defendant, as I have already suggested, will carry the cause to the Supreme Court. Shall the same judgment be there rendered, and this Statute be enforced, the question may be carried to the Supreme Court of the United States.

Gentlemen. At whatever cost, at whatever hazard, the principle of religious liberty will be sustained by the people of the United States ; they will not permit its infringement, though in the person of an individual whose sentiments may render him obnoxious. This ill judged prosecution, this trial and your ver-

dict; will go further to extend in this land, the evil, which it is proposed to check, than all the Defendant could write or say, in his life time. No good can come of it, you will unfortunately identify the cause of the Defendant, with the cause of religious persecution. You subject his opposers to the accusation of bigotry and an overbearing spirit of sectarian domination. You will make him a martyr and them Inquisitors. There may be now but a small speck in the horizon, but it may become a cloud charged with evil, and spread and burst upon our whole country. Such are the horrors of religious persecution, that men will fly for relief even to infidelity. Let a stop be put at once to the first approach of religious persecution, by your verdict. Put an eternal rebuke upon this prosecution and upon every prosecution of like nature. If you do not, the error, of those who have got up this prosecution may be remediless. The consequences may not light on their heads, but it may fall with vengeance upon the heads of their children, perhaps upon the whole nation.

Gentlemen. What induced and instructed the framers of the Constitution of our Commonwealth assembled to erect a political establishment, destined I trust to last for ages, to enact in the solemn Ordinance of the people, a prohibition to the Legislature and the Judiciary, which should be enrolled in letters of gold in our State House and Court Houses, against hurting, molesting or restraining any citizen in his person, liberty or estate, for his religious profession or sentiments? It was the warning voice of history, which has been well said to be philosophy teaching by example, which instructed our Revolutionary fathers, then engaged in a struggle for liberty, to lay broad and deep the foundations of a Republican government, and to establish the Christian and Republican principle of universal toleration, as a dyke to keep out a flood of evils and persecutions, on account of religious professions and sentiments, which had disgraced and desolated Europe and America and deluged other countries in blood. Was not this the lesson of history, to the framers of our glorious Constitution? Let us open its ample page, and we shall find it crimsoned with the records of cruelty flowing from the union of Church and State, and caused by the interference of Government, in matters of religion. The whole history of the Christian Church is a history of furious persecutions, either suffered by Christians, or inflicted by them on one another. The Founder of the Christian Religion died on the Cross of Calvary. Of his faithful disciples, it is believed all save one per-

shed by ignominious deaths on the scaffold, martyrs to their faith, and the victims of persecution. The first cry of mortal agony, heard after the crucifixion of Jesus Christ, was the dying exclamation of the martyr Stephen. His persecutor Saul, soon became converted to the religion which he had attempted to destroy by persecution, and in his turn drank to the dregs the cup of human suffering, and finally sealed his faith, by the death of martyrdom. In Rome in the days of Nero, the early Christians were held by the people in abomination, as a pernicious race, and subjected to the most horrible persecutions. Their reputation was falsely assailed. They were despitefully used, and man said all manner of evil against them on account of their religious professions or sentiments. The most ingenious and exquisite torments were devised for their affliction, and extermination. Many were covered over with pitch, then set on fire, and consumed by lingering and dreadful tortures, and placed at night to light up as torches the gardens of the Roman Emperor. In the reigns of succeeding Emperors, they were always in danger, and often exposed to a renewal of the terrors of religious persecutions. They were accused of atheism. And slanders, shocking to humanity were forged and circulated against a race of men, whose faith was pure and whose conduct exemplary, and whose history is unstained, till they obtained political power, and the corrupt and unholy union of Church and State, was consummated in the time of Constantine, the first Christian Emperor. The heart bleeds at the recital of the sufferings, to which the early Christians were exposed, on account of their religious professions and sentiments. It was a common thing to expose them in the Amphitheatre, to the fury of wild beasts, in order to gratify the intolerance of spectators more savage than the wild beasts, who were employed as the appropriate executioners in the cause of religious fanaticism. In a small town in Phrygia, where the faithful Christians had in the time of Dioclesian's persecution, gathered themselves into a church, it was surrounded by the soldiers, and set on fire, and the whole congregation, men, women and children perished in the flames. The prisons were filled with the Christian clergy; and racks, scourges, gibbets, wild beasts, and red hot beds of torture, were adopted, as engines of religious conversion against the Christians, which since the time of Constantine, and the union of Church and State, to the everlasting disgrace of the authors of such persecutions, have been employed with ten fold zeal and fury by Christians against their fellow Christians.

Gentlemen. We have hitherto seen the Christians in the day of adversity, suffering for conscience' sake, the most dreadful persecutions. We are now to look upon another prospect. We shall behold them in the time of prosperity becoming in their turn persecutors of one another. We shall find them dishonoring their name, and disgracing the character of their pure religion, renouncing the mild precepts of the Gospel, which proclaims the glad tidings of peace on earth, and good will to men, and disregarding the example of the Founder of the Christian religion. The Emperor Constantine became converted to Christianity, and the Christians rose from obscurity to glory, and became by the possession of the political power of the Roman Empire, the masters of the civilized world. From that time commences the history of the persecutions by Christians. From that day to this hour, human victims have been sacrificed on the altars of bigotry. The history of the Christian religion, since politics and religion became mingled together, is a tale of blood, and an awful warning to the present and all future ages, to beware of penal laws, and penal prosecutions on the subject of religion. The Christian religion is purity itself, but its simplicity has been defiled, by connecting with it the vices of politics, and suffering it to be polluted by the possession of avarice and ambition, which have given birth to the contentions, that have caused rivers of Christian blood to flow. These evils have resulted from the union of Church and State, the fountain whence flows all penal laws and prosecutions on the subject of religion, in disregard of the declaration of Jesus Christ "my kingdom is not of this world." I have said that all penal laws and prosecutions on the subject of religion are the offspring of the union of Church and State. The remark is correct, for until such an union was accomplished, and political power thereby obtained, there never were and never could have been either penal laws or penal prosecutions among Christians, on the subject of religious profession or sentiments.

How came this union of Church and State, so fatal to the peace and happiness of the Christian family, to have been formed? One of the first acts of Constantine, after his conversion, was to turn religion into a political engine, as it always had been in the Roman Republic and the Roman Empire, and what the Christian cause gained in power, it lost in purity. Among his first acts was a pollution of Christianity, by connecting political with religious interests. The Emperor Constantine declared at the Council of Nice, to the Bishops 'Ye are

Bishops of things within the Church, but I am Bishop as to externals." Here we find the Crown and the Mitre adorning the same head, and the Crook and the Sceptre, gracing the same hand. All the powerful potentates of the earth, Charlemagne, Henry the Eighth, the Protestant Princess Elizabeth, Peter the Great, the Emperor Napoleon, and even his late Majesty George the Fourth, have claimed and enjoyed the same prerogative and clerical preeminence. Charlemagne stated in a letter to the clergy "I have taken place among the Bishops, both as an auditor, and an arbitrator. We have seen and by the grace of God, decreed, that which ought firmly to be believed." Henry the Eighth claimed the title of "Sole and Supreme Head of the Church of England." His successors have enjoyed the same distinction, and since the Union of Scotland with England, the British Monarch, has been the Head of two Churches, the Kirk of Scotland and the Church of England, and swears in his coronation oath, to maintain Presbyterianism in Scotland, and Episcopacy in England, although the contentions of the two churches have caused a revolution, and brought one of his predecessors to the scaffold.

It is thus the union of Church and State, the fountain of penal laws and penal prosecutions for religious profession or sentiments, has been accomplished. It is thus, that the pure religion of Jesus Christ, has been adulterated, with the corruptions of politics, and made a "kingdom of this world." The effects of this union exist with immense power to this day in Europe, and have extended even to this distant land, the existence of which was not even imagined, when Constantine, in his Imperial robes, and with the terrors of the diadem of absolute power flashing from his brows, chose to ordain himself the "Bishop as to externals" of the meek and lowly followers of Jesus Christ. Are we not at this day, in this Court House, engaged in the trial of Abner Kneeland, on an indictment founded on an act of the Government, a penal law on the subject of religion? This assumption of the first Christian Emperor of a right, to unite the external affairs of government, with the "things within the Church" is the source of all penal laws and penal prosecutions among Christians respecting religious profession and sentiments, which have so extensively afflicted the human family, stained the pages of Christian history and filled the world with carnage. All these enormities have arisen, from the interference of Government in religious matters, with which Government has no legitimate right to interfere, and from the right claimed by various Governments,

to punish men for the profession of sentiments respecting religion, supposed according to the various creeds of those Governments, to be erroneous and heretical.

Let us follow on in our historical progress, and examine the consequences of this dangerous union of Church and State, whence is derived the power to establish penal laws, and to institute penal prosecutions for religious profession or sentiments. No sooner had this unholy union been consummated, than the great Trinitarian controversy commenced and raged among the Christians, between the Arians and the Athanasians. The Christian Church was rent in twain, by the fierce contention of the raging parties. The business of the world was interrupted, and men were anxiously awaiting the decision of the Council of Nice, on the important questions raised by this controversy. The Trinitarians prevailed. Arius was condemned, and has ever since been deemed in the Church a heretic, while his great opponent Athanasius has been revered and canonised. Arius was sentenced to exile for his religious profession or sentiments. But he soon found means, by the intrigues of the Court, to obtain the favor of the "Bishop as to externals," although his opinions remained condemned, by the decrees of the Council of the "Bishops of things within the Church." This union of Church and State invests the Government you see not only with the power to punish heretical profession or sentiments, but also with the power to forgive heresies.

The Arians were at first cruelly proscribed. But upon their return to favor with the "Bishop as to externals" they retorted persecution, with fury upon their former persecutors the Trinitarians, and by the magical power of this union of Church and State, the orthodox Trinitarians were rendered subject to persecution, by the heretical professors of the condemned Arian faith. Athanasius in turn was condemned and banished, and the history of the life of that distinguished man, displays the most sublime virtues of the Christian character, united with intolerant zeal. For the sake of his religion, he was sometimes compelled to seek a refuge in the cells of the hermits of Africa, where for years he was concealed from the world, till occasion called him forth, to vindicate before Princes and the people his doctrines. At other times, he was obliged, to seek a shelter among the clergy of the West of Europe. All Africa and Europe, were the scenes of his achievements and sufferings in the cause of religion, and he is immortalized in the memory of the faithful Trinitarians. The

Archbishop of Alexandria was five times driven by the storms of persecution from his Archbishopric, and twenty years of his life, were passed in banishment, or as a wanderer proscribed for his religious profession or sentiments. Blood soon began to flow, and in the first tumult at Constantinople, three thousand one hundred and fifty persons, lost their lives. In Rome the very temples of religion were often defiled by bloodshed, and it has been said, that "the face of Rome, renewed the horrid carnages of the massacres of Marius and the proscriptions of Sylla." In one of the religious commotions of Constantinople, the slaughter in the Church of St. Acacius was so dreadful "that the well before the church overflowed with a stream of blood, which filled the porticos and the adjacent courts." Such were the scenes in the Christian Church of the Roman Empire, during the reign of Constantine and his sons, at the period of the Arian and Athanasian dispute, and when the union of Church and State was in the full tide of experiment.

But this union was for a time interrupted by the accession to the Imperial Throne of the Emperor Julian, who proclaimed a decree of universal toleration. Yet such were the fatal divisions, which had resulted, during the union of Church and State in the reigns of the Christian Emperors, who preceded him, that the cause of the Christian religion became endangered by the quarrels among the Christians. The penal laws and prosecutions of the former reigns, had sunk so deep in the memory, and had so embittered Christian against Christian, that the hopes, of the apostate Julian were encouraged by those divisions, to destroy Christianity and restore the ancient religion of Greece and Rome.

The following is an account of the state of feeling, which then existed among the Christians, extracted from *The Decline and Fall of the Roman Empire*.

The Christians, who beheld with horror and indignation the apostacy of Julian, had much more to fear from his power than from his arguments. The pagans who were conscious of his fervent zeal, expected, perhaps with impatience, that the flames of persecution should be immediately kindled against the enemies of the gods; and that the ingenious malice of Julian would invent some cruel refinements of death and torture, which had been unknown to the rude and inexperienced fury of his predecessors. But the hopes, as well as the fears, of the religious factions were apparently disappointed, by the prudent humanity of a prince, who was careful of his own fame, of the public peace, and of the rights

of mankind. Instructed by history and reflection, Julian was persuaded, that if the diseases of the body may sometimes be cured by salutary violence, neither steel nor fire can eradicate the erroneous opinions of the mind. The reluctant victim may be dragged to the foot of the altar, but the heart still abhors and disclaims the sacrilegious act of the hand. Religious obstinacy is hardened and exasperated by oppression; and, as soon as the persecution subsides, those who have yielded, are restored as penitents, and those who have resisted, are honored as saints and martyrs. If Julian adopted the unsuccessful cruelty of Diocletian and his colleagues, he was sensible that he should stain his memory with the name of tyrant, and add new glories to the Catholic church, which had derived strength and increase from the severity of the pagan magistrates. Actuated by these motives, and apprehensive of disturbing the repose of an unsettled reign, Julian surprised the world by an edict, which was not unworthy of a statesman, or a philosopher. He extended to all the inhabitants of the Roman world, the benefits of a free and equal toleration; and the only hardship which he inflicted on the Christians, was to deprive them of the power of tormenting their fellow-subjects, whom they stigmatized with the odious titles of idolaters and heretics. The Pagans received a gracious permission, or rather an express order to open ALL their temples; and they were at once delivered from the oppressive laws, and arbitrary vexations, which they had sustained under the reign of Constantine and of his sons. At the same time, the bishops and clergy, who had been banished by the Arian monarch, were recalled from exile, and restored to their respective churches; the Donatists, the Novatians, the Macedonians, the Eunomians, and those who, with a more prosperous fortune, adhered to the doctrine of the council of Nice. Julian, who understood and derided their theological disputes, invited to the palace the leaders of the hostile sects, that he might enjoy the agreeable spectacle of their furious encounters. The clamour of controversy sometimes provoked the emperor to exclaim, "Hear me! the Franks have heard me, and the Alemanni;" but he soon discovered that he was now engaged with more obstinate and implacable enemies; and though he exerted the powers of oratory to persuade them to live in concord, or at least in peace, he was perfectly satisfied, before he dismissed them from his presence that he had nothing to dread from the union of the Christians. The impartial Ammianus has ascribed this affected clemency to the desire of fomenting the intestine divisions of the church; and the insidious design of undermining the foundations of Christianity, was inseparably connected with the zeal, which Julian professed, to restore the ancient religion of the empire.

The death of the Emperor Julian, who on a few occasions disregarded his own glorious decree of toleration, and cruelly

permitted persecution of the Christians, restored the Christian once more to power, and renewed the coalition of the Altar and the Throne. Persecutions were soon resumed. But the relation of particulars would occupy too much time. Let us come at once at the persecutions occasioned by the great schism of the Latin and Greek Churches, which still subsists, the head of the former being the Bishop and Pope of Rome, and that of the latter the Bishop and Patriarch of Constantinople.

The causes of this schism need not be related. Some of the cruel effects and persecutions, which it caused are all which now require our attention. In the twelfth century a tumult arose on this account at Constantinople. The popular fury, of the Greek Christians, was exerted against the Catholics. The following is an account of the tumult in the Decline and Fall of the Roman Empire.

The people rose in arms; from the Asiatic shore the tyrant despatched his troops and galleys to assist the national revenge; and the hopeless resistance of the strangers served only to justify the rage and sharpen the daggers, of the assassins. Neither age, nor sex, nor the ties of friendship or kindred, could save the victims of national hatred, and avarice, and religious zeal: the Latins were slaughtered in their houses and in the streets; their quarter was reduced to ashes; the clergy were burnt in their churches, and the sick in their hospitals; and some estimate may be formed of the slain from the clemency which sold above four thousand Christians in perpetual slavery to the Turks. The priests and monks were the loudest and most active in the destruction of the schismatics; and they chanted a thanksgiving to the Lord, when the head of a Roman cardinal, the pope's legate, was severed from his body, fastened to the tail of a dog, and dragged, with savage mockery, through the city.

The Catholics, in time avenged the persecutions, they had experienced from their Greek brethren. Under a pretence of a Crusade to recover the Holy Sepulchre, Constantinople was invaded by the Latin Christians, and plundered; and the City was exposed to the most unrestrained pillage, sacrilege and massacre. The thickest part of the City of Constantine, was for eight days and nights consumed by a conflagration, kindled by religious bigotry. The following is an account given of the sack of Constantinople, by the Latin Crusaders, in the celebrated work before referred to.

Pope innocent the third accuses the pilgrims of respecting in their lust, neither age nor sex, nor religious profession; and bitterly

laments that the deeds of darkness, fornication, adultery, and incest, were perpetrated in open day; and that noble matrons and holy nuns were polluted by the grooms and peasants of the Catholic camp.

In the mean while, his desolate churches were profaned by the licentiousness and party zeal of the Latins. After stripping the gems and pearls, they converted the chalices into drinking-cups; their tables, on which they gamed and feasted, were covered with the pictures of Christ and the saints; and they trampled under foot the most venerable objects of the Christian worship. In the cathedral of St. Sophia, the ample veil of the sanctuary was rent asunder for the sake of the golden fringe; and the altar, a monument of art and riches, was broken in pieces and shared among the captors. Their mules and horses were laden with the wrought silver and guilt carvings, which they tore down, from the doors and pulpit; and if the beasts stumbled under the burden, they were stabbed by their impatient drivers, and the holy pavement streamed with their impure blood. A prostitute was seated on the throne of the patriarch; and that daughter of Belial as she is styled, sung and danced in the church, to ridicule the hymns and processions of the Orientals. Nor were the repositories of the royal dead secure from violation: in the church of the apostles, the tombs of the emperors were rifled: and it is said, that after six centuries the corpse of Justinian was found without any signs of decay or putrefaction.

To such a fatal extent were these divisions among the Christians widened, that the City of Constantinople was lost by the Christians. The chief minister of the Greek Empire, declared, that he would rather behold in Constantinople, the Turban of Mahomet, than the Pope's Tiara or a Cardinal's Hat. His preference was soon gratified. The turbaned followers of Mahomet, soon scaled the walls and battered down the gates of the City, and the splendid church of St. Sophia built by Constantine and rebuilt by Justinian has been made a Mahometan Mosque. The most magnificent City in the world has been rendered the trophy of the valor of the united Musselmén, and a monument of disgrace to the Christians, divided by their contentions and persecutions, which lost to Christendom such an invaluable possession.

We now leave the City of Constantinople in the hands of the victorious infidels, wrested from the Christians in consequence of their religious dissensions and persecutions, and pass to Western Europe, almost every part of which has been whitened by the bones of those, who have been slain in battle, or have perished by the hand of the executioner, in consequence

of religious wars and religious persecutions among Christians, who are commanded by their religion to love one another, and to forgive the errors and offences of their brethren even seventy times seven.

Let us take a glance at Spain, where the Inquisition was founded, by Ferdinand and Isabella, who, with all her blind bigotry, has been famed, for the gentleness of her character, and the graciousness of her manners. We have discovered but a small part of the secrets of that terrible "prison house," the Inquisition. But the little which is known, causes the blood to freeze, and defies description. The atrocities of the Inquisition, and the religious fetes, the burning of heretics, spectacles which were attended by the chivalry and beauty and learning of Spain have filled Spain with blood and the world with sorrow. In the Netherlands then also under the power of Spain it is said by Grotius that a hundred thousand of the subjects of Charles the Fifth perished by the hands of the public executioner, by virtue of penal laws on the subject of religion, and in the reign of his gloomy and bigotted successor, both Holland and Spain were the scenes of the most bloody persecutions.

Let us now pass to France. We do not escape from horrors but we only change the scene, for here we find the bloody tragedy of the St. Bartholomew massacre enacted in which more than fifty thousand protestants were put to death in consequence of penal laws on the subject of religious profession or sentiments. In the City of Paris the streets flowed with blood, and many of the most distinguished patriots and heroes of France were massacred. The Admiral Coligni and five hundred men of rank, with ten thousand subjects of inferior condition, fell in one City, the City of Paris. In all the Provinces and the other Cities of the Kingdom, the same work of butchery was perpetrated, under the sanction of penal ordinances on the subject of religion. It was in beautiful France that Calvin was proscribed and banished, and his friends endured the death of martyrdom. At a later period of French history, we find the Edict of Toleration made by Henry the Fourth, repealed by Louis the Fourteenth, and penal laws on the subject of religion enforced with the utmost rigor against the Calvinists. The grandson of the minister of Henry the Fourth, who drew up the Edict of Nantz, was broken on the wheel for the offence of his ancestors. The galleys and the prisons were crowded with the victims of persecution, and tortures and executions covered the land with mourning. Five hundred thousand of the best citizens of

France, chiefly skilful artizans, the producers of the wealth of the country, were driven into exile, by penal laws on the subject of religion. They enriched by their emigration England and Holland by introducing into these countries the most valuable French manufactures, and a blow was given to the commercial and manufacturing interests of France, which has never been repaired.

If we look to Switzerland the retreat of the great reformer Calvin, we are filled with astonishment and disgust at the sight of the flames of persecution consuming the Unitarian Servetus, who perished at the stake, by the influence of Calvin, who was himself a fugitive from his own country, driven from his native land by the scourge of religious persecution.

We now pass to Holland and there we find that while the Catholics of France were persecuting the Calvinists, the Calvinists of Holland were putting to death some of the most illustrious patriots of their country, banishing Grotius and his friends, and persecuting with the utmost virulence, the Arminians, for their religious opinions.

If we pass to the British Isles, what a melancholy prospect do we behold in the history of Christian persecutions and in the multitude of penal laws on the subject of religion, with which the British Statute book is filled, and many of them written in blood. What a multitude of victims distinguished for public services, and private virtues, splendid abilities and eminent learning, have perished at the stake and on the gibbet, for their religious profession or sentiments. So great was the demand for fuel for the Lollards Pit, where the Protestant victims of penal laws and prosecutions on the subject of religion were burnt, that at one period, when the fury of persecution was at its height, the price of wood as is said in a letter to Erasmus became materially advanced in the vicinity of London. Neither age, nor sect, nor character, could save the devoted objects of religious intolerance, from tortures and death. Wickliff's doctrine was condemned by the council of Constance, which condemned his followers Jerome and Huss, who perished on the Continent in the flames. The remains of the great reformer Wickliff were disturbed in England, after he had been dead forty years, and his tomb was opened, and his bones taken out, burned to ashes, and the ashes with brutal and impotent fury thrown into a neighboring brook.

The cruelties in the time of Queen Mary would fill a volume with the recital of the sufferings of the reformers, the victims at Smithfield of penal laws and penal prosecutions on the subject

of religion. She shed blood enough to float, and committed enormities enough to sink her navy. Yet all the excesses of this Princess, and most of the excesses we have described proceeded from the desire to render man better, and to honor God. And this is the great mischief of religious persecution, the very virtues the best feelings of the heart become blind guides, and lead men to the commission of the greatest mischiefs, in the belief that they are doing the greatest good. Mary herself was from her cradle an object of jealousy and persecution, and the child of misfortune, by her mother's calamities, her father's crimes and her own religion. Yet Mary, in all things, save when her understanding was blinded by religious fanaticism, was as just, and as amiable, as Isabella of Spain, who founded the Inquisition, and upon her accession to the English Throne, called before her, as we are told, her Judges, and gave them in charge, the following direction, thus described in Blackstone.

And therefore it deserves to be remembered to the honor of Mary I. (whose early sentiments, till her marriage with Phillip of Spain, seem to have been humane and generous,) that when she appointed Sir Richard Morgan chief Justice of the common pleas, she enjoined him, "that notwithstanding the old error, which did not admit any witness to speak, or any other matter to be heard, in favor of the adversary, her majesty being party; her highness's pleasure was, that whatsoever could be brought in favor of the subject, should be admitted to be heard: and moreover, that the justices should not persuade themselves to sit in judgment otherwise for her highness than for her subject."

What shall be said of the violations of the duties of humanity, the rights of man, for centuries of bondage, in Catholic Ireland. As great barbarities have been perpetrated in that devoted country by the British Government on account of religion even in our day, as were committed in revolutionary France by the excesses of the French Revolution. Who shall tell the sad story of Ireland's wrongs? It shall be told you, by her gifted son, that child of genius, the orator Curran, who thus describes the wretched condition of the victims of religious oppression, in his native land.

Merciful God! what is the state of Ireland, and where shall you find the wretched inhabitant of this land? You may find him perhaps in a gaol, the only place of security, I had almost said, of ordinary habitation; you may see him flying by the conflagrations of his own dwelling; or you may find his bones bleaching in the

green fields of his country ; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests, less savage than his persecutors, that drift him to a returnless distance from his family and his home.

We have passed from the East to the West of Europe. Let us now cross the Atlantic, and rapidly examine some of the events of the history of our own Commonwealth. We shall find that the evil spirit of religious persecution, has visited even this spot, separated by an ocean from the contagion of the vices of Europe. Yes, even in this land, we find the gloomy footsteps of the malignant demon of religious persecution. The Pilgrims, who came to the wilderness to enjoy the rights of conscience, denied it to others. In the Province Charter is the following provision, denying the liberty of conscience, to the Roman Catholics, who, in Maryland were the first proclaimers of universal toleration.

And for the greater ease and encouragement of our loving subjects inhabiting our said province or territory of the Massachusetts Bay, and of such as shall come to inhabit there, we do by these presents, for us, our heirs and successors, grant, establish and ordain, that for ever hereafter there shall be a liberty of conscience allowed in the worship of God to all christians (except papists) inhabiting or which shall inhabit or be resident within our said province or territory.

The early laws of Massachusetts are the bloody records of superstitious bigotry and cruelty, and they are the most flagrant violations of the rights of conscience. In one of the early Statutes, is a declaration aimed, at the ignorant Indian, that neither "ignorance or infirmity of human nature" should be an excuse for its violation. By this abominable enactment, the helpless babe, and the furious maniac, as well as the poor unenlightened Indian, were rendered subject to its bloody penalties. In others the punishment of banishment is denounced, on those, who should deny that Christ gave himself as a ransom for our sins, a doctrine which Dr. Channing considers as calumniating our Maker. Under the same penalty, the openly condemning or opposing the baptism of infants, and maintaining that there is any sin to be repented of in the regenerate, were prohibited. In some laws, the Quakers, the brethren of the philanthropic Penn, are pronounced a cursed sect of blasphemers and heretics, and those, who should bring them into the province, and even those who should entertain them or give them a cup

of cold water, were liable to grievous punishments. The Quakers were liable to be ignominiously carried from place to place and finally ejected out of the State. Their opinions were pronounced blasphemous and themselves rogues and vagabonds. Quakers taken up were subjected to be branded with the letter R. on the left shoulder and to be scourged. Upon a return into the State, they were liable to the punishment of death. In one of the laws, the denying, that men are justified by the death and righteousness of Christ, and the maintaining that men are justified by the perfection of their own works, is prohibited under heavy penalties.

Under the enactments of these superstitious laws written in blood, the most horrible persecutions raged in this Commonwealth. Many Quakers were scourged, imprisoned and banished. Among the victims, was a girl of about eleven years of age. The ears of several persons were cut off. A woman was placed upon the gallows, one of the punishments you will recollect, of this Statute against Blasphemy, on which the prisoner at the bar is indicted. At a subsequent period she suffered the punishment of death. A pilot was whipped for piloting some Quakers in a vessel. Some others were condemned to the same punishment for adhering to them, for persecution made the Quakers friends, and the people were moved with compassion that crowds attended them in the prison, and it became necessary to establish a guard to keep off the people. Indeed one of the Quakers told the Judges, that for every Quaker put to death, four came in his room. Similar penalties were practised upon the Baptists, and Roger Williams was driven as you know into banishment among the savages, and his friends were subjected to every species of most atrocious persecution. Let us pass on in the history of horrors in this State, which have been the results of bloody penal laws and prosecutions on the subject of religion. Nineteen persons were executed in my native town of Salem for witchcraft, and one of the chief agitators of this horrible delusion, was a most celebrated divine and scholar, and the Pastor of one of the Boston churches. His original letters, as I am informed, have been lately discovered in the town of Salem, among the papers of an ancient family. Those letters inflame the excitement in every possible manner, and the writer expressed the utmost solicitude to have all the news respecting the spectral evidence collected and sent to him, in order, as he said, that he might box it about among his church, because nothing could be done, either in politics or religion without an uproar.

Gentlemen. An old friend of mine belonging to that place, lately asked me, if it were not about time to get up the thing again, to revive the tragedy with new dresses and scenery. My friend is a shrewd observer of the signs of the times, and must have been endued with a sort of Scotch second sight anticipation of the present prosecution against the prisoner at the bar, he must have augured bigotry "at a distance," and scented the approach of superstitious intolerance in the taint borne on the rising breeze.

I do not find that the law against witchcraft, or the celebrated law mentioned by Governor Hutchinson in the third volume of his History of Massachusetts, punishing with death any Roman Catholic clergyman, who should come into this Commonwealth, has ever been repealed by the Legislature of this State. Upon the doctrine contended for in this case, that the old unrepealed laws remain in force till repealed by the Legislature, both these laws are now in force, as much as this Statute against Blasphemy. This law, punishing with death, a Roman Catholic clergyman, who should come into the Commonwealth, is referred to by Governor Hutchinson, in his relation of the story of the oppressions, which were practised upon the Neutral Roman Catholic French of Nova Scotia. It is a tale of sorrow, also told with all the force of truth and the eloquence of generous feeling, by Judge Haliburton in his elegant History of Nova Scotia. The settlements of this unfortunate people were broken up, by an expedition from New England, under the command of General Winslow, a brave and accomplished military genius of Massachusetts, who could not restrain his grief in the execution of his orders. Their houses were burned, their cattle and property were destroyed, and about three thousand were hurried on board transports, husbands sometimes in one ship, wives in another and children in a third, and brought and dispersed among the American colonies. Here they were reduced to beggary, and among other heart rending cruelties, they were deprived of the consolations of their religion, for death was the punishment of the Roman Catholic clergyman, who should come to console the living or comfort the dying. There has hardly been a more cruel case of oppression, except the expulsion of the Morescoes from Spain, and the practice of the infernal slave trade. In their own country, these people were independent and happy in the practice of morality, and the enjoyment of the consolations of their religion. They had among them, no lawyers, judges, sheriffs, no whipping post, no pillory, no gallows, no Statutes against Blasphemy, no penal

laws, no penal prosecutions on the subject of religion, and the country, on account of the innocence of its inhabitants, bore the name of the ancient Arcadia. From the summit of earthly felicity, they were at once plunged into the depths of misery, and one of them in the anguish of a wounded and broken spirit, told Governor Hutchinson that their case "was the hardest which had happened since our Saviour was upon earth." Some of these unfortunate men fled, by the light of the conflagration of their own dwellings, and at length, after experiencing every vicissitude of suffering, found rest for the soles of their feet, in a spot of the wilderness, as they believed, within the boundaries of the United States. There they founded the settlement of Madawaska, now becoming a place of absorbing political interest. There the remains of the Acadian race live, and as Mr. Kavanagh, the intelligent member of Congress from Maine, who was lately sent, by the Government of Maine, on a mission to this people, informed me, preserve the language, the manners and the innocence of their ancestors. They have no laws but the dictates of reason and conscience, and they revere the precepts and practice the duties inculcated in the gospel of Jesus Christ, which among this pure people is, as yet, unsustained, by the aid of the whipping post, the pillory, and the gallows.

Gentlemen. If this law be in force forbidding the coming into this State of a Roman Catholic Priest, under the penalty of death, we might have seen the venerable Dr. Matignon, and the amiable Bishop Cheverus, at this bar. We may yet see on trial for his life, the able, the persevering, the learned Fenwick, the present Bishop of Boston, whose life is now devoted, not only to the spiritual, but the moral and intellectual improvement of the great flock which God has committed to his care. Such are the splendid spectacles which may be exhibited to our people. We may see men, whose lives have been adorned with every Christian grace, and every moral virtue, standing at the criminal's bar, in trials involving questions of life or death, if the penal laws on the subject of religion, enacted in the dark days of ignorance, have not been abolished in this Commonwealth by our Bill of Rights.

Gentlemen of the Jury. This cursory historical examination must satisfy you, that all sects, powerful enough to excite jealousy have been persecuted, and that all sects are in danger of becoming persecutors, when the purity of religion becomes polluted, by an amalgamation with politics. It must satisfy you, that the sword of Government should never be called to

the aid of the Christian religion, which being "of God," does not need the support of penal laws and penal prosecutions. The sad lesson of history, furnished the solemn admonition to our fathers, in framing their Constitution of Government, to declare in the Bill of Rights, that no person should be hurt, molested or restrained in his liberty, person or estate, for his religious profession or sentiments, and thus to abolish for ever in this Commonwealth all penal laws and penal prosecutions on the subject of religion. Our wise fathers knew, that belief is not a matter of the will, and that a person cannot believe as he may choose, but must obey the law of moral necessity, and believe according to the convictions of his understanding. Would any one remain voluntarily in error? The supposition is a monstrous absurdity; for no earthly motive could operate, to induce the deliberate maintenance of erroneous opinions, in such an important matter as religion. Errors of opinion in religious affairs therefore cannot be crimes, and cannot be made the subject of penal laws and prosecutions. The framers of the Constitution determined that the first principles of justice should not be violated, that the rights of conscience and the freedom of opinion should not be disturbed, and that the bloody scenes of European and Colonial history, should not be acted o'er again in this Commonwealth, and therefore in erecting the Constitution, the noble political edifice, which rose by the will of the people, they determined to establish a firm bulwark of the rights of man. They proved to the world, that the blood of the American Revolution had not been shed in vain. They have put it out of the power of the Legislature to enact, and out of the power of Courts and Juries to enforce, penal laws on the subject of religion. They have displayed the wisdom of philosophers, the humanity of philanthropists, the expanded views of enlightened statesmen, and they deserve to be ranked among the noblest benefactors of mankind.

The principle of universal toleration, which the framers of the Constitution proclaimed in our Bill of Rights, is in accordance with the opinions of the most enlightened minds which have ever honored and improved the character of man. Let me read to you some glorious effusions of genuine feeling and eloquence in the British Senate, in a debate upon a proposition for the passage of a law, similar in its provisions to this Statute against Blasphemy, on which the prisoner at the bar now stands indicted. A glowing account of this debate, which took place in the House of Lords in 1719, is contained in the

following extract, from the History of Great Britain, by the Rev. Mr. Belsham.

A vehement controversy having recently arisen on the subject of the Trinity, chiefly in consequence of the learned tracts published in opposition to the established doctrine by the famous professor Whiston, the university of Oxford, in full convocation, resolved that the solemn thanks of that body should be returned to the earl of Nottingham for his most noble defence of the catholic faith, contained in his answer to Mr. Whiston's letter concerning the eternity of the Son of God and of the Holy Ghost. And at the instance of this theological statesman, elated no doubt by this flattering distinction, a bill was introduced into the house of peers for the suppression of blasphemy and profaneness; which enacted, that if any one spoke or wrote against the being of a God, the divinity of Jesus Christ or the holy Ghost, the doctrine of the Trinity, the truth of the Christian religion, or the divine inspiration of the Scriptures, he should suffer imprisonment for an indefinite term, unless, in a certain form prescribed, he should publicly renounce and abjure his errors. And by a clause in this bill, the archbishops and bishops within their respective jurisdictions, and the justices of peace in their several counties at their quarter-session, were authorised to summon any dissenting teacher, and to require his subscription to a declaration of faith containing the articles above enumerated; and upon his refusal, it was enacted, that he should be *ipso facto* deprived of the benefit of the act of toleration. The lords being summoned on the second reading of this bill (May 1721,) Dr. WAKE, archbishop of Canterbury, sealed his apostacy from the principles of civil and religious liberty, by moving to have it committed. Upon which lord Onslow rose, and declared, "that though he was himself zealously attached to the doctrines of the church of England, he would never consent to support even the truth itself by persecution; and he moved that the bill might be THROWN OUT." He was seconded by the duke of Wharton, who said, that, having been himself frequently accused of impiety and irreligion, he conceived that he could not more effectually vindicate his character from these imputations, than by opposing to the utmost a measure so repugnant to the spirit of Christianity. And taking a Bible from his pocket, he excited the amazement of the house, by reading with much gravity many passages of the sacred volume, containing exhortations to universal charity, meekness, and mutual forbearance. The earl of Peterborough, with uncommon boldness and happiness of expression, declared, that though he was for a parliamentary king, he was not for a parliamentary God or a parliamentary religion; and that if this bill were to pass, he should be ambitious of a seat in the conclave of cardinals, as more honorable than that which he occupied in the British house.

of peers. Dr. Kennet, bishop of Peterborough, protested that he NEVER would be concerned in the execution of such a law—and he earnestly hoped that his brethren on the bench would not concur in the establishment of a PROTESTANT INQUISITION. The lords Cowper and Townsend also spoke with much ability against this infamous and execrable bill ; by which a pretended regard for the honor of religion was, as usual, made a pretext for the gratification of the most malignant passion—a bill which openly and impudently avowed and adopted the most profligate practices of the Romish church ; and the principle of which, if once admitted, would lead to all the horrors of the rack, the stake, and the wheel. It was on the other hand supported by the earl of Nottingham, the lords Bathurst and Trevor, the bishops of London, Winchester, Lichfield and Coventry, and various others. But on a division, it was rejected by a majority of sixty voices against thirty-one.

At a later period of British history, in 1792, when Charles James Fox, that great light which illumined the whole sky while it remained above the horizon to cheer the friends of liberty was in the fullness of meridian glory, an attempt was made in the British House of Commons, to abolish all penal laws on the subject of religion. But in the corrupt and then unreformed House of Commons of that day, the generous effort failed. Mr. Belsham gives the following account of the attempt by Mr. Fox, to strike a blow for liberty.

Mr. Pitt having, in his speech on the motion for the repeal of the Test, avowed, in the most unequivocal and *unguarded* terms, the right of the dissenters to a full and complete toleration, Mr. Fox embraced the opportunity of bringing forward, in the course of this session, a motion for the repeal of those penal statutes, which, notwithstanding the existence of the Toleration Act, were still in force against those who in any manner impugned the doctrine of the TRINITY. He shewed, from a specification of authentic facts, that these laws were far from being a mere dead letter ; not to mention the hatred and opprobrium which they were the means of creating. Such was the wretched bigotry fostered and cherished by these laws, that a bishop of the church (Dr. HORSELEY) had not scrupled in a recent publication to declare “ that Unitarianism being *heresy*, even the moral good of the Unitarians was sin.” Mr. Fox, expressed his ardent wish to extirpate heresy by *fire*—not indeed in the old mode of burning heretics, but by burning all those statutes which formed the code of persecution. Mr. Pitt appeared on this occasion somewhat embarrassed, and rested his opposition chiefly on the disuse and oblivion into which the acts in question had fallen, and the dangerous alarm which might be excited by the repeal—disclaiming, in warm terms, the principles and character of a persecutor. Mr. Fox, in reply, remarked, that he knew not

how to distinguish between a persecutor and an advocate for penal laws in matters of religion, which was the precise definition of the term. As to the general alarm, of which Mr. Pitt was apprehensive, it was the bitterest satire upon the spirit of his own administration, to suppose the temper of the public so fatally changed as not to endure the repeal of laws so execrable, and till a recent period, so generally the subject of execration. Mr. Fox's motion was rejected by a majority of 79 voices.

Mr. Fox was the champion of the American cause, in the time when the British King, Lords, Bishops, and Judges, the law Christianity Judges, were attempting to enslave our people. This great orator and profound statesman you see, was also the champion of liberty and universal toleration. This friend of the rights of man, could he have carried through Parliament a bill to abolish all penal laws on the subject of religion, would have adopted in framing it, the explicit expressions of our Constitution, no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for his religious profession or sentiments.

You shall now hear the opinion of the Apostle of liberty, the illustrious Author of the Declaration of American Independence, in favor of universal toleration. Mr. Jefferson in his Notes on Virginia, thus utters the emotions of his pure heart, and the mature reflections of his powerful and cultivated understanding, on this subject.

"The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have no authority over such natural rights only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others." "Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors, but will not cure them. Reason and free enquiry are the only effectual agents against error. Give a loose to them, they will support the true religion, by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only. Had not the Roman government permitted free enquiry, Christianity could never have been introduced. Had not free enquiry been indulged at the æra of the reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions *will be protected* and new ones encouraged. Was the government

to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now. Thus in France the emetic was once forbidden as a medicine, and the potatoe as an article of food. Government is just as infallible too when it fixes the systems of physics. Galileo was sent to the inquisition for affirming that the earth was a sphere: the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This error however at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lived was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established on the basis of reason, than it would be were the government to step in, and make it an article of necessary faith. Reason and experiment have been indulged, and error has fled before them. It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion; whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject to its coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature. Introduce the bed of Procrustes then, and as there is danger that the great men may beat the small, make us all of a size, by lopping the former and stretching the latter. Difference of opinion is advantageous in religion. The several sects perform the office of a censor morum over each other. Is uniformity attainable? Millions of innocent men, women and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity. What has been the effect of coercion? To make one half the world fools, and the other half hypocrites. To support roguery and error all over the earth. Let us reflect that it is inhabited by a thousand millions of people. That these possess probably a thousand different systems of religion. That ours is but one of that thousand. That if there be but one right, and ours that one, we should wish to see the 999 wandering sects gathered into the fold of truth. But against such a majority we cannot effect this by force. Reason and persuasion are the only practicable instruments. To make way for these, free enquiry must be indulged; how can we wish others to indulge it while we refuse it ourselves."

Gentlemen. Is there no danger in mixing the ingredients of a poisoned chalice, that it may hereafter be commended to our own lips, and we ourselves compelled to drink the bitter draught of persecution to the dregs? We wish to live and hope to die in the Christian faith, and that our children may

walk in Christian peace and liberty, without being exposed to molestation and persecution. We should beware then, how we establish the precedents of penal prosecutions on the subject of religion, which sooner or later have returned to plague the authors of such precedents, such violations of the rights of man. But it may perhaps be said, there surely can be no danger of retaliation, for the defendant and his friends are too few and weak, to excite alarm. So have thought and said all who have wielded the scourge of religious persecution. The unbelievers in Christianity may now be few, but from the constant alarm sounded from the pulpits and in religious publications, it seems that there is some apprehension, lest their strength may be increased. We have been told of the dreadful scenes of the French Revolution. Was not infidelity in power, and were not those excesses new manifestations of the danger of the union of political, with either religious or irreligious fanaticism? But the blood shed by the infuriated infidel zealots of France during the short period in which they ruled, did not produce one such tragedy, as the St. Bartholomew massacre. Indeed the persecutions of other ages were the precedents by which the Infidels of France attempted to justify their own flagitious enormities.

I again ask, is there no danger, in allowing ourselves to persecute those, to whom we are opposed, because they have not the strength to make resistance? Have we not seen the greatest power arise, from beginnings most inconsiderable in political strength. The Christian flock were but one hundred and twenty in number at the gathering of the faithful, after the Shepherd had been stricken. Now they are numerous as the leaves on the trees of the forest, or the stars in the firmament, and the sands on the sea shore. Their religion is spread to the uttermost parts of the earth. The pure Christian worship is now offered up around the globe, and ever cheered by the light of the sun; for when that glorious luminary seems to us to sink in the West, and our evening prayers are rising, he appears to other parts of the world, to be rising from the East in the mild radiance of morning glory, and the orisons of other climes are ascending. But perhaps, it will be said, God has prospered and speeded the work of the propagation of our religion, because it is the religion of truth. Let not this delightful reflection deceive us into a mistaken security, let us not lay this flattering unction to our souls, for it should be recollected that God in his wisdom, has permitted a false religion, to spread more extensively, than the Christian reli-

gion among men. The founder of that religion, was not born till about six hundred years after the Christian era. He had nothing to sustain his impositions but the influence of his majestic beauty of person, his enthusiastic and commanding eloquence, and his matchless valor. Yet he was crowned with conquest in his life, and has secured in the estimation of a larger portion of the human family, than is numbered in the hosts of Christendom, the reputation of a sage, the renown of a hero, and the glory of a prophet. His followers have obtained the possession of Egypt, where the family of Jacob was sheltered from the famine, and where Joseph and Mary and the child Jesus were protected from the persecution of Herod, and where Moses the law giver of the Jews, was born, preserved and educated. They hold in their hands the Holy City of Jerusalem, the spot where once stood the Temple of Solomon, and the seat of the Holy Sepulchre. The mountain whence the Commandments were declared is in their power, and the Hermits of Mount Sinai, when France sent her magnificent expedition to Egypt, brought down from their monastery, their charter of toleration, signed by Mahomet, to be countersigned by the hand of Bonaparte. They have wrested from us, the magnificent City of Constantine, and the church of St. Sophia, the most elegant edifice ever raised for Christian worship, is now the most magnificent mosque in the Mahometan Empire. The victorious Musselmen spread with rapidity along the northern coast of Africa, passed the Straits of Gibraltar and conquered Spain. The mountains did not long impose a barrier to their conquests, for the Conquerors of Spain soon rushed with the force of a torrent from the summit of the Pyrenees upon the plains of France. In one of the battles the Christians were defeated with such dreadful carnage that in sorrow and despair it was declared that "God alone could reckon the number of the slain." The Mahometan warriors passed the Rhone, and were in their victorious march upon Paris, when they were met and gloriously repulsed by Charles Martel, the hero of France and the last earthly hope of Christendom. Who can imagine what might have been the consequences, if the event had been adverse to the Christian arms, in that terrible conflict on the blood stained plains of France, on the issue of which the fate of the Christian cause, so far as it can depend on human events, seemed to be suspended. A philosophical historian thus speculates on this grand event, which checked the progress of the Saracen arms, then threatening to subdue all Europe. He says, "A victorious line of march had been pro-

longed above a thousand miles, from the Rock of Gibraltar, to the banks of the Loire, the repetition of an equal space would have carried the Saracens to the confines of Poland, and the highlands of Scotland; the Rhine is not more impassable than the Nile or the Euphrates, and the Arabian fleet might have sailed without a naval combat into the mouth of the Thames." Perhaps, Gentlemen, had the banner of the Crescent triumphantly advanced in that fight, and the ensign of the Cross fallen back in discomfiture, the discoverer of America might have planted in the New World the standard of the false Prophet of Mecca, and a Mahometan Judge might this day have been sitting in your place, and condemning Christians, the victims of penal laws and penal prosecutions on the subject of religion. Nay more, as if it were to rebuke the presumption of man, in assuming to avenge with his feeble arm, the wrongs against Heaven, and to enforce the Scripture truth, that man cannot find out the Almighty unto perfection, God in his mysterious wisdom has allotted the best portion of this earth's heritage, "the clime of the East," and "the land of the Sun," to the Infidels for a possession. Thus is it described in Byron's glowing verse.

Know ye the land of the cedar and vine,
Where the flowers ever blossom, the beams ever shine;
Where the light wings of Zephyr, oppress'd with perfume
Wax faint o'er the gardens of Gul* in her bloom;
Where the citron and olive are fairest of fruit,
And the voice of the nightingale never is mute;
Where the tints of the earth, and the hues of the sky,
In colour though varied, in beauty may vie,
And the purple of Ocean is deepest in die;
Where the virgins are soft as the roses they twine,
And all, save the spirit of man, is divine?
'Tis the clime of the East; 'tis the land of the sun.

* The rose.

Gentlemen. We behold how the true religion, which seems to have been left, since very early times, to human exertions, for its propagation, has risen, from small beginnings, to a mighty power. We behold also, how a false religion, by the zeal and perseverance of its professors, has been spread more extensively than even Christianity among men, and how much it has endangered, even in Europe, the Christian ascendancy. Should not the reflections which this historical review cannot fail to excite, teach us, that from the weakness, even of a false reli-

gion, may arise very great political power, and earthly strength. Does not the voice of all history instruct us, never to trample upon our opponents in religion, because we do not dread their present strength? False doctrines we see are permitted to exist among men, and infidelity may be allowed to stalk in our land, as in revolutionary France, and persecution will accelerate the day. Let us not then in this day of our power, establish dangerous precedents, and set a fatal example, by which our opponents may in case they shall obtain strength, retaliate upon our children the heaviest calamities. Let it not be in the power of infidels persecuting our children, to whom we will teach the pure doctrines of the Gospel, and to whom we will give a charge to teach to their children the same faith; let it not be in the power of infidels, who may persecute them for their religion, to reproach them with our example, and justify their violations of humanity and justice, by our proscriptions! You, Gentlemen, will do as you please; but as an American citizen, I protest against this prosecution and it shall never be brought up in judgment against me or my posterity.

Gentlemen of the Jury. I am now worn down by the labours of this defence, and am almost ready to say, I have done. But I cannot close without returning my thanks, to the Counsel for the Commonwealth for his many courtesies, to the Judge for his constant indulgence, and to you for your patient and respectful attention. One word more, and we part. If the defendant shall fall in this prosecution, a nobler victim will fall with him, for the blow which is aimed at the prisoner at the bar, is a fatal blow at the Constitution of his country.

Note. A.

The position, which is maintained on page 27, respecting the construction to be given to the language of a defendant in a criminal prosecution for a libel, may seem to be impugned by some decisions of Lord Mansfield and Lord Ellenborough, both of whom were as determined enemies to the freedom of the press, as ever sat upon the English Bench. These decisions however merely determine, that where there is a plain, obvious meaning of the defendant's language, it shall be taken in preference to a forced meaning which in fact is not a meaning. These Judges do not relax in the least degree, the rule, that in libel prosecutions, as well as in all other Criminal prosecutions, every reasonable doubt shall be thrown into the scale of the defendant.

Note. B.

The following passage was omitted on page 87, and it is a part of the quotation from Tucker's Blackstone, and follows the other part quoted on that page.

"Mr. Swift in his system of the laws of Connecticut tells us, that the English common law, had never been considered as more obligatory there, than the Roman law had been in England."

E R R A T A.

On page 17, 40th line from top,	for <i>prayers</i>	read prayer
" 18, 6th	" for in	" to
" 27, last line	" for them	" those
" 33, 23d	" for doctrines	" doctrine
" 36, 21st	" for the	" this
" 38, 22d	" for is	" be
" 40, 1st	" for have	" has
" 51, 37th	" for persecution	" persecutions.
" 73, 35th	" for all	" are
" " "	" for agree	" agreed
" 76, 34th	" for opinions	" opinion
" 77, 34th	" for Horsey	" Horsey
" 94, 29th	" for in	" to
" 97, 14th	" for ninth	" sixth
" " 15th	" for 578	" 398
" 98, 35th	" for or	" nor
" 101, 1st	" for is	" are
" 102, 41st	" for as	" and
" 103, 24th	" for for	" of
" 105, 38th	" for Mahomedan	" Mahometan
" " 13th & 32d	" " "	" "
" 106, 14th	" " "	" "
" " 38th	" for shall	" should.

SPEECH
OF
ABNER KNEELAND,
DELIVERED BEFORE THE
SUPREME COURT
OF THE CITY OF BOSTON,
IN HIS OWN DEFENCE,
ON AN INDICTMENT
FOR BLASPHEMY.

November Term, 1834.

BOSTON :
PRINTED AND PUBLISHED BY J. Q. ADAMS,
No. 14, Devonshire Street.

1834.

SUPREME COURT,

MAY TERM, 1834.

COMMONWEALTH vs. ABNER KNEELAND.

JURORS SWORN UPON THE TRIAL.

JOSEPH H. DORR, Foreman,
JOSEPH BUMSTEAD,
JAMES BATES,
GEORGE BROWN,
HORACE A. BREED,
EDWARD D. CLARK,
DAVID CLAPP, Jr.
EBENEZER DURGIN,
CALVIN DIMMICK,
ANTHONY FINCH,
BENJAMIN C. FROBISHER,
CHARLES G. GREENE.*

* This was the man who did honor to himself, and saved the Commonwealth from indelible disgrace; by not agreeing to a verdict of GUILTY, as did the former Jury.

SUPREME COURT vs. ABNER KNEELAND:

[NOVEMBER TERM.]

Monday, November 17th, 1834.

This case at the present term, instead of being argued on the part of the government by Mr Parker, as on the two former trials, was argued by the Attorney General, Mr Austin. As 24 pages of my Speech was printed before I knew of this arrangement, this will account for my speaking of 'the counsel for the government,' instead of the Attorney General, as I do in several instances in the printed speech; and also for my criticising on what was said on the former trials by Mr Parker, expecting perhaps the same would be said again. Some parts of these remarks were modified in the delivery, and an apology made to the Attorney General for others, explaining to the audience that they were not intended for him. But there were other remarks which were intended for him, in reply to what he said in the opening about obscene prints, &c., by which it seemed that he intended to fix a stain on me, on my friends, or both, and which I took the liberty to hurl back again, and cast into his teeth with all the indignation such a high insult, as I conceived it to be; justly merited; and he took care not to repeat it in the closing; but so far from it, spoke respectfully of some of my friends whom he noticed as being present.

Many illustrations were made *ex tempore*, in the course of the Speech, in order to bring home the argument more forcibly and fix them upon the mind of the jury; while some portion of Mr Dunlap's Speech which was intended to have been read, were omitted; as also all that part which relates to the 'Christian Examiner.' These parts were omitted, on account of the Attorney General having conceded, and the Court agreeing so to instruct the jury, to rest the whole case upon the statute, without resorting to the common law of England; and also because it was contended by the A. G. and admitted by the Court, that a man may deny the Scriptures being the word of God, without being guilty of Blasphemy according to the statute. This was a novel doctrine to me, and what I did not expect to hear from such a source; but the A. G. seemed to be in a strait between two opinions; that of supporting the Unitarians who evidently, openly, and avowedly deny a great portion of the Scriptures as being the 'Holy Word of God,' and at the same time put down Free Enquirers who consider the whole, and are doing no more by the whole, than they are by certain parts, which, in fact, is about the whole amount of their offending. In a word, the A. G. seemed to have a double barrelled gun, one of which was charged for those who believe too much, and the other for those who believe too little. On the whole, particularly in closing, he was more moderate, less abusive, and displayed by far greater talent than what appeared in the County Attorney on the former trials. There was, however, a sufficiency of abuse, so that if the Jury had believed all that they heard, they must have acquitted the Defendant on some parts, on the ground of his want of intellects; and on other parts they must have considered him more guilty than a murderer, or even the pirates now under trial for their lives.

NAMES OF THE JURORS

SWORN ON THE THIRD TRIAL.

JOHN HEWES, Foreman.
JOHN BROWN.
BENJAMIN BURLEIGH.
EDWARD BUGBEE.
DANIEL G. BALL.
SETH COLE.
ABIATHAR CUMMINGS.
LORING DUNBARR.*
THOMAS FAXON.
THOMAS L. HUTCHINSON.
JOHN S. JONES.
LEWIS MUNROE.

The case was given to the Jury on Wednesday morning at 11 1-4 o'clock, who, after being out seven hours, returned and informed the Court that they could not agree; and of course, were dismissed: and the trial is postponed to March Term, 1835.

* This is the man who finally had independence of mind to hold out to the end on the third trial. Several others run well for a while, - but * * * * * hindered them."

SPEECH.

May it please your Honor, and you Gentlemen of the Jury :—

AFTER having been compelled to experience two long, and to me very tedious trials ; in which I was, in my own estimation, most ably defended ; but (unfortunately for me) to very little effect—after having once more heard the opening of the learned counsel for the government, in which he seems to take it for granted that I have been guilty of crimes which never entered my heart to commit, and of which he seems to expect that you will find me guilty, I am extremely happy in being allowed this day to speak for myself, touching all matters and things whereof I have been accused, and which it now becomes your province to consider. And first, permit me most solemnly to aver that I stand before you as an honest, innocent man ; “that I have lived in all good conscience before God until this day ;” that my moral character has not only been unimpeached hitherto, but is now unimpeachable ; that I have never knowingly or intentionally injured a fellow being to the value of a single cent, since I came to years of discretion, and within my present recollection ; (I believe I took an apple once from a neighbor’s orchard, when I was a boy, and I got a very severe lecturing from my father even for that ;) and as every man, however guilty he may be, is to stand as innocent before a court and jury until his guilt shall have been established by positive proofs and incontestible arguments, I sincerely hope that both the court and jury will hear me patiently.

Gentlemen. It is not so much for myself that I shall plead, as it is for the cause of Truth, in which I profess to be engaged, and the Liberty of my country, both civil and religious, which I hold dearer to my heart for the sake of my children and posterity, than I do my own individual life.

I shall contend, gentlemen, that I have not, in any thing that I have either said or written, nor in any thing that I have published, (save in the choice of words in point of delicacy and taste) gone beyond the

bounds of fair argument, honorable criticism, or justifiable satire and ridicule. And if I can show this to your satisfaction, gentlemen, as I have no doubt I shall, then I have no fears as to the result. But if christians, or those who call themselves such, are to be allowed the most unbridled latitude in speaking even of other christian sects, and more especially in speaking of unbelievers whom they term Atheists and Infidels, and unbelievers are not allowed to meet them on their own ground, and contend against them with their own weapons, then where is the liberty of speech and of the press? It is gone, or else it never has had any thing more than a mere name to live. If this be the case, in vain our fathers fought for American freedom; in vain have we attempted to rear a monument on yonder height in honor of one who fell at the very threshold of such a laudable struggle; we had better demolish than attempt to finish it, and convert its ruins into the tomb of the *genius of liberty*!

But, gentlemen, I hope better things of you although I thus speak, and will not even suspect your patriotism or your discernment; and as your understandings and your consciences shall decide, so make up your minds, when you, *patiently*, shall have heard my defence.

As it respects the first article named in the indictment, and which so much pains has been taken to bring home to me, and to make it as it were my own, I hope I shall be able to convince you what is literally the fact, that I never knew it, and of course had no opportunity to disavow it, until my foreman, at that time Mr Bullard, had been summoned before the grand jury, and that the next day, or at least before my paper came out again, I was arrested; and that I did not disavow it then, because I thought it would be construed into an attempt to forestal public opinion, and to prejudice whoever might be the jury, in my favor; an act that I spurned at the very idea of doing. My counsel was of the same opinion, and I followed his advice in this particular, as he will acknowledge should he be asked the question.

As it respects the second article, I expect to show that it has been misunderstood, (with all due deference do I speak it) even by the court, on each of the former trials, and a construction has been put upon it which was never intended by the writer, and which, as I think, the words will not justly bear. And

As respects the third article, I shall prove by a document that was not introduced in either of the former trials, that I am not an Atheist; that I have not denied the existence of God, or of any thing else which does in reality exist; but have professed my belief in God, and in the only true God, in the very letter, from a part which, it is now attempted to prove me an Atheist; but I shall prove that I have denied

nothing, nor expressed my unbelief in any thing, except what I have a right to disbelieve ; and that of which any man, and every man, has full liberty to express his unbelief ; for any man may express unbelief in every christian dogma without being guilty of blasphemy.

Gentlemen. Having proceeded thus far, the next thing to which I wish to call your attention, is the meaning of the word *blasphemy*. For although the law which has been read to you in some measure defines it, yet the original meaning of the term as defined by the learned, will certainly, with you, have some weight, especially when I shall quote none but a christian author. Dr Campbell, in his *Dissertation on the term, Philadelphia quarto edition, pp. 147, 148, says,*

“ Mere mistakes in regard to character, especially when the mistake is not conceived, by him who entertains it, to lessen the character, nay, is supposed, however erroneously, to exalt it, is never construed by any into the crime of defamation. Now, as blasphemy is, in its essence, the same crime, but immensely aggravated, by being committed against an object infinitely superior to man, what is fundamental to the existence of the crime, will be found in this, as in every other species, which comes under the general name. There can be no blasphemy, therefore, where there is not an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the love and reverence of God.”

“ Further, with the account given above, of the nature of *blasphemy*, the style of Scripture perfectly agrees. No errors concerning the divine perfections can be grosser than those of polytheists and idolaters, such as the ancient Pagans. Errors on this, if on any subject, are surely fundamental. Yet those errors are never in holy writ brought under the denomination of blasphemy : nor are those who maintain them ever styled blasphemers. Nay, among those who are no idolaters, but acknowledge the unity and spirituality of the divine nature (as did all the Jewish sects), it is not sufficient to constitute this crime, that a man's opinion be, in their consequences, derogatory from the divine majesty, if they be not perceived to be so by him who holds them, and broached on purpose to diminish men's veneration of God. The opinions of the Sadducees appear in effect to have detracted from the justice, the goodness, and even the power of the Deity, as their tendency was but too manifestly to diminish in men the fear of God, and consequently to weaken their obligations to obey him. Yet neither our Savior, nor any of the inspired writers, calls them *blasphemous*, as those opinions did not appear to themselves to detract, nor were advanced with the intention of detracting from the honor of God. Our Lord only said to the Sadducees, *Ye err, not knowing the Scriptures nor the power of God.* (Matt. xxii. 19.) Nay, it does not appear that even their adversaries the Pharisees, though the first who seem to have perverted the word, and though immoderately attached to their own tenets, ever reproached them as blasphemers, on account of their erroneous opinions. Nor is indeed the epithet *blasphemous*, or any synonymous term, ever coupled in Scripture (as is common in modern use) with *doctrines, thoughts, opinions*. It is never applied but to words and speeches. *A blasphemous opinion, or blasphemous*

doctrine; are phrases, (which how familiar soever to us) are as unsuitable to the scriptural idiom, as a *roiling opinion*, or *stunderous doctrine*, is to ours."

I might enlarge on this subject, but it is unnecessary. I wish you only to keep this definition in mind, as I shall have occasion to revert to it again. It is the intention of the heart, and not the words spoken, that constitutes blasphemy; and I trust we shall have nothing here like *constructive crimes*. My opinions may or may not be erroneous; but whether they are or are not, I come not here to defend them. I only come to defend my rights and privileges, which I hold in common with every free citizen of these United States and of this Commonwealth. I shall make no attempt at any display of talents as a public speaker; for I am not accustomed to speak in such a place as this, and especially on such an occasion. I shall confine myself therefore, to plain simple facts, and such arguments and such only, as I conceive to be important and pertinent in this case.

Gentlemen. The general grounds of defence which have been stated, and which I shall still follow, are, "the case is not within the statute, on which the indictment is founded, and that the statute is in violation of the letter and spirit of the Constitution."

All will agree that I am not morally accountable for the first article, having had no knowledge of it till two weeks after it was published. This being the fact, I am no more legally accountable for that article than I am morally, unless that is attributed to me as a fault, which a high sense of honor prompted me to do; an act which, I considered at the time, and do still, as praiseworthy, that is, in not attempting to prejudice the jury in my favor. I allude to my not disavowing that article during the first trial.

But lest (what is barely, and as I conceive, hardly possible) some of you may think that I am still responsible for it in a legal sense, I am determined to look it fully in the face, and see to what it amounts. And first, as to its obscenity. If this is to be relied upon for a verdict, it should have been made a distinct charge. There is no such thing as obscene blasphemy known in common sense, whatever there may be in common law. And the idea of seizing hold of obscenity to eke out the charge of blasphemy, or to seize hold of blasphemy to eke out the charge of obscenity, is all a mere trick, as I conceive, for the purpose of making out a kind of compound crime of two items, neither of which would have been sufficient of itself, to have constituted an indictable offence. But I deny there being any obscenity in the case. There is an indelicate word I admit; but not obscene. There is not a word in the article, except what is found in all our English Diction-

aries, from the largest down to the smallest of our common school Dictionaries. How can such words be considered obscene?

Gentlemen. How often have your feelings and mine been mortified, by being reproached with the fact of our being the descendants of those who hung the witches; hung or banished the Quakers; and whipped or banished the Baptists? And will posterity, think ye, a century hence, think any better of us? Here we are, more than one third advanced in the nineteenth century, trying a man, ostensibly for obscenity, but in reality for blasphemy, for having published a word, totally without his knowledge too, which is found in all our common school Dictionaries; where children of all ages, and of both sexes, are not only allowed to see it, and may see it every day of their lives, but also they are there taught its meaning. What an honor this will reflect on the name and character of the grave lawyer who made out this indictment, and the equally grave judges (with all due deference I speak it) who have been so repeatedly compelled, very much against their will as I conceive, to sit on this [what posterity will call and consider] scandalous trial; and the no less grave jury of twelve men who once pronounced the man of sixty guilty of such an offence; and the eleven others that would have done so likewise, had it not been for one independent mind, who saved their names from such a disgrace. Tell it not in Massachusetts; publish it not in the streets of Boston; lest it be the means of making a thousand Infidels where there is now scarcely one.

If the language here is thought to be obscene, let us compare it a moment with the language which, as we are informed, God uses to convey a similar idea, and when speaking of the same organs. I quote from Deuteronomy xxiii. 1. "He that is wounded in the stones or hath his privy member cut off, shall not enter into the congregation of the Lord." Now this, gentlemen, must be considered holy language, as it comes from a book that is called holy; but if the word used here, in relation to the same organs, had been adopted instead of the one that is used, would you say, would any one say, that it would render the passage more refined, more chaste and delicate, or more in conformity to classic literature? The word used is the word found in all our medical authors, is derived from the latin, and is the most refined of any word we have in the English language to convey the same idea. That I do not quote more from the book called the Bible, equally pure as the above, is not because it is not there; I could give you enough of a similar character for your breakfast, dinner, and supper; yea, you would not want another meal of the kind for a week; which, were it found in any other book, a book not considered holy, would, for vulgarity, obscenity, and nastiness, be enough to

make the very walls of this building, could they speak, cry out—

“Procul ! ô procul este impuri !”^{*}—VIRG.

In relation to all such writings, however and wherever found, I would say, “*Honi soit qui mal y pense* : Evil to him who evil thinks.” It is the motive, and the motive only, that should be looked at. But, gentlemen, I forbear, and will say no more on that part of the subject.

Gentlemen. I shall next take notice of the supposed blasphemy of this article, for I believe there never has been much reliance put on its supposed obscenity : otherwise, that would have been made a distinct charge. Now, what does this article say ? For I have reason to believe that it has been misconstrued and misunderstood. It says (in other words, indeed, and in words that I should not have used) that the ignorant Frenchman (of whom the writer was speaking) “firmly believes that Jesus Christ was begotten by the Holy Ghost.” The learned counsel, and even the Court may tell you that these are not the words. I grant it. This you will perceive yourselves. But it is the idea, and the only idea there communicated. Does not every one who believes in the existence of such a personage as the Holy Ghost, believe he is altogether spiritual, and not material ? And if not material, is it possible that he has material organs ? And if not, wherein consists the difference between saying a man was begotten without material organs, and saying that he was begotten by the holy ghost ? There is a verbal difference only ; but not a shadow of difference in the idea. Now, according to the strict letter of this law, is that blasphemy ? No, gentlemen, it is not. It denies nothing. It curses nothing. It reproaches nothing. It ridicules nothing except a certain creed, which creed, according to my understanding, is in itself, perfectly ridiculous.

Gentlemen. I am prepared to show from the bible itself, that the text brought to support this statement about the miraculous conception, is a fraud palmed upon the christian public by some early writer, who is palpably incorrect in his statement, whether ignorantly or wilfully, I will not undertake to say. I believe it is a rule of Court, and if I am incorrect in this, the Court will please to correct me, that when any part of the testimony of any witness is known to be false, unless it be a matter in which he might be very innocently mistaken, you are not bound to believe any thing which that witness says.

The remarks I am about to make will not apply to the whole book of Matthew, unless it be contended that the same writer wrote the

^{*} “ Away ! stand off, O ye impure ! ” I have substituted the word *impuri* for *prophani*, as being more appropriate.

whole, which (I do not admit) but only to the narrative which commences at the 18th verse of the 1st chapter, and ends with the 2d chapter. In the 22d. and 23d verses of the 1st chapter, it says "Now all this was done, that it might be fulfilled which was spoken of the Lord by the prophet, saying, Behold a virgin shall be with child, and shall bring forth a son, and they shall call his name Emmanuel." I am about to show, and shall show you with the permission of the Court, that there is no such text in any of the prophets. The text referred to is Isaiah vii. 14. But the Greek text here in Matthew is neither a correct quotation from the Septuagint, the Greek version of Isaiah, nor a translation of the Hebrew ; but a palpable perversion, a falsification of both. I have here a folio bible printed in 1657. The first edition of which was printed at Antwerp, in 1571. The Old Testament is in Hebrew and latin, line for line ; and the Apocrypha, and the New Testament, in Greek and latin, in the same manner. The latin version is by the learned Montanus, who was a Spaniard, and considered one of the most learned of his day. We are informed that Philip II. of Spain, offered him a bishoprick as a reward for his merits. Now, gentlemen, to enable you fully to understand what I wish to lay before you, I shall compare this text in Isaiah with one in Genesis, (Gen. xvi. 11,) where we have an account of Hagar who fled from her mistress Sarai, Abrám's wife. She was met, as you recollect, by an angel, who, after some conversation, said to her, "Behold thou art with child, and shalt bear a son, and shalt call his name Ishmael." Now I wish to inform you, what I shall show to the Court, that the words in Isaiah vii. 14, are exactly the same in the Hebrew as they are in this verse in Genesis, excepting the pronoun [thou] instead of the word rendered virgin, and the proper name Ishmael, instead of Emmanuel. It is the same also, with a very little variation indeed, which does not alter the sense in the least, in the latin. The text in Genesis is rendered, Ecce tu prægnans, et paries filium, et vocabis nomen ejus Ishmael. And the one in Isaiah is rendered, Ecce virgo prægnans, et pariens filium, et vocabis nomen ejus Himmanu-el. The only slight difference is, et paries, *and bearest*, second person singular in Genesis, and et pariens, *and bearing*, present participle, in Isaiah. But in the Hebrew there is not even this slight difference. In both texts it is *pregnant, and thou shalt bear a son, and thou shalt call his name*. But the text in Matthew is, — *virgo in utero habebit, a virgin shall conceive, not is pregnant, et pariet filium, et vocabunt nomen ejus Emmanuel*. Here instead of prægnans, it is in utero habebit, instead of et pariens, it is et pariet ; and instead of vocabis, the second person singular, it is vocabunt the third person plural. From all which it appears that this supposed virgin ; I say *supposed*, for neither the He-

Hebrew word עַלְמָה here rendered virgin, nor the latin *virgo*, signifies a virgin exclusively ; both may signify, and often do signify, a young married woman ; this *supposed* virgin, therefore, was pregnant in the days of Isaiah. How is it possible, in the very nature of things, that the young woman of whom Isaiah spake, could have been the mother of Jesus ; or that the birth of Jesus, let his mother's conception have been ever so miraculous, could have been the fulfilment of such a supposed prophecy written in the days of Isaiah, more than 700 years before the commencement of the christian era ? 700 years, gentlemen, is a little too long for a young woman to go in that condition.

There is also a London Hebrew edition of the New Testament, published by the London Bible Society. But the translators did not dare to render this text in Matthew, (i. 23,) like the Hebrew in Isaiah, though they have made it nearer to it than the Greek text. I have all these texts written out in full in Hebrew, Greek, and Latin, for the satisfaction of the Court, who will correct me if I have stated any thing wrong concerning them.*

This Hebrew version of the New Testament was got up for the purpose of converting Jews to christianity. But how is it possible it can have that effect, when every Jew must perceive that here is a very

*The following was handed to the Judge for his inspection.

Genesis, xvi. 11.

הַנָּה הָרָה וְיִלְדֶּת בֶּן וְקִרְאָתָה שְׁמוֹ יִשְׁמָעֵאל

Isaiah, vii. 14.

הִנֵּה הָעַלְמָה הָרָה וְיִלְדֶּת בֶּן וְקִרְאָתָה שְׁמוֹ עִמְנוּאֵל

Matthew, i. 23.

הִנֵּה הָעַלְמָה הָרָה וְיִלְדֶּת בֶּן וְקִרְאָתָה שְׁמוֹ עִמְנוּאֵל

Gen. xvi. 11. Ἴδου σύ ἐν γαστρὶ ἔχεις, καὶ τεξήσῃ υἱόν, καὶ καλεῖσιν τὸ ὄνομα αὐτοῦ Ἰσμαήλ.

Isa. vii. 14. Ἴδου ἡ παρθένος ἐν γαστρὶ λήψεται [ἑξ] καὶ τεξήσεται υἱόν, καὶ καλεῖσιν τὸ ὄνομα αὐτοῦ Ἐμμανουήλ.

Matt. i. 23. Ἴδου ἡ παρθένος ἐν γαστρὶ ἔξει, καὶ τεξήσεται υἱόν, καὶ καλεῖσιν τὸ ὄνομα αὐτοῦ Ἐμμανουήλ.

Gen. xvi. 11. Ecce tu prægna, et paries filium, et vocabis nomen ejus Ishmael.

Isaiah vii. 14. Ecce virgo prægna et pariens filium, et vocabis nomen ejus Himmanu-el.

Matt. i. 23. Ecce virgo in utero habebit, et pariet filium, et vocabunt nomen ejus Emmanuel.

important text relied on for that purpose, which has been so perverted by the New Testament writers as to make it speak quite a different language ; insomuch, that the translators, in giving a Hebrew version of it, did not dare to turn it back again into the Hebrew of *Isaiah* ? Would he not ask, Do you mean to insult my understanding with such a work as this ? A work that professes to quote from my own scriptures, but which quotes the text falsely, with an obvious view of perverting its meaning ? No learned Jew, I presume, ever was or ever can be thus converted.

Gentlemen. I would not dwell upon this subject had it not been fraught with so much mischief. Rivers of blood have flowed, and the peace of all christendom has often been disturbed in consequence of the disputes growing out of the supposed importance attached to a belief in this supposed virgin's son ; and not only a belief in him, but a belief that his mother became pregnant without the knowledge of man. And here you see how such an idea has been supported for nearly, or as the clergy would have us believe, quite 1800 years ; and none of them have had the learning, or if they have had the learning, they have not had the *honesty* to expose the fraud !

Gentlemen. What was the condition of Tamar when it was told Judah, her father-in-law, that she was with child by whoredom ; and when she said to her father-in-law, "By the man whose these are, am I with child ;" showing him the signet, the bracelets, and the staff ? Gen. xxxiii. 25. As was her condition, so was the condition of the young woman of whom *Isaiah* spake ; for the word is exactly the same in both texts in the bible I have before me. What was the condition of the wife of Phinehas, the daughter-in-law of Levi, that good old man who was so frightened when he heard that the ark of God was taken by the Philistines, that he fell and broke his neck ; and she, hearing of the circumstance also, and that her father-in-law and husband were dead, " bowed herself and travailed ; for her pains came upon her ?" As was her condition, so was the condition of this supposed virgin, excepting it is said, that the former was " near to be delivered ;" and herein is all the difference. 1 Samuel. iv. 19. What was the condition of Bathsheba, when 'she sent and told David, saying, I am with child' ? 2 Sam. xi. 5. As was her condition, so was the condition of her whose child was to be a sign to Ahaz. But in the name of reason and common sense, how could a child born more than 700 years after Ahaz was dead, be a sign to Ahaz ?

But, gentlemen, in addition to all this, I have here the fourth London edition of the New Testament, published by the Unitarian Society for promoting Christian Knowledge, and the practice of virtue, by

the distribution of books. In this version the whole of this narrative concerning the virgin &c., as also that in the gospel of Luke, is printed in italics, as an indication that it is not genuine. And in Matthew, there is the following note, at the end of the genealogy.

"The remainder of this chapter, and the whole of the second, are printed in Italics, as an intimation that they are of doubtful authority. They are indeed to be found in all the manuscripts and versions which are now extant; but from the direct testimony of Epiphanius, and indirectly from that of Jerome (see Pope on Mir. Concept. p. 93), we learn that they were wanting in the copies used by the Nazarenes and Ebionites, that is, by the ancient Hebrew Christians; for whose instruction, probably, the gospel of Matthew was originally written; and to whom the account of the miraculous conception of Jesus Christ could not have been unacceptable, if it had been found in the genuine narrative. Nor would it at all have militated against the doctrine of the proper humanity of Christ, which was universally held by the Jewish Christians, it being a fact analogous to the miraculous birth of Isaac, Samuel, and other eminent persons of the Hebrew nation. The objection, so much insisted upon, that the authority of the Ebionites, is to be admitted *indiscriminately*, because their testimony is appealed to in a *particular case*, is trifling in the extreme. Further, if it be true, as Luke relates, chap. iii. 23, that Jesus was entering upon his thirtieth year (see Wakefield's Translation) in the fifteenth year of the reign of Tiberius, he must have been born two years at least after the death of Herod, a circumstance which alone invalidates the whole story. See Lardner's Works, vol. i. p. 432. It is indeed highly improbable that no notice should have been taken of these extraordinary events by any contemporary writer, that no expectation should have been excited by them, and that no allusion should have been made to them in any other passage of the sacred writings. Some of the facts have a fabulous appearance, and the reasoning from the prophecies of the Old Testament is inconclusive. Also, if this account be true, the proper name of Jesus, according to the uniform custom of the Jews, would have been Jesus of Bethlehem, not Jesus of Nazareth. Our Lord in the gospels is repeatedly spoken of as the son of Joseph, without any intimation on the part of the historian that this language is incorrect. See Matt. xiii. 55. Luke iv. 23. John i. 45. vi. 42. The account of the miraculous conception of Jesus was probably the fiction of some early gentile convert, who hoped by elevating the dignity of the Founder, to abate the popular prejudice against the sect. See upon this subject, Dr Priestly's History of Early Opinions, vol. 4. b. iii. c. 20; Pope on the Miraculous Conception; Dr William's Free Enquiry; Dr Bell's Arguments for the authenticity of the narratives of Matthew and Luke, and Dr William's Remarks; Dr Campbell and Dr Newcome's Notes upon the text; Mr Evanson's Dissonance, chap. i. sect. 3. chap. iii. sect. 2; Jones's Development of Events, vol. i. p. 365 &c.; Sequel to Ecclesiastical Researches, pt. i. chap. 7, 8.

Also in Luke, at the end of chapter i. verse 4, there is appended the following note.

"The remaining verses of this, and the whole of the second chapter, are printed in Italics, as an indication that they are of doubtful authority ; for though they are to be found in all manuscripts and versions which are now extant, yet the following considerations have induced many to doubt whether they were really written by Luke."

The writer of this note then goes into quite an elaborate argument on the subject, which I shall not take up time now to read.

Here, gentlemen, is not the work of some hot-brained fanatic, with more zeal than knowledge, but the work of an association of gentlemen professing to be christians. And must we think that the christians are all rogues, and that there is not an honest man among them ? But what greater contempt by any species of ridicule or satire, can any man put upon this whole subject than is here put upon it by christians themselves ? If the whole account is spurious, as is here indicated, (and not without good reasons too) as it respects its supposed divine origin, or divine authority, nothing can render it more contemptuous. And if, because an individual, believing the whole account to be a fiction, has undertaken to play off a little sarcasm or ridicule on those who are so ignorant as to believe it, must that be distorted into a blasphemous libel against God ? Let this once pass, gentlemen, and there will be but an easy step after this, to rekindle the fires of Smithfield. Who then can be safe ? Not one, except he becomes a menial servant to the ruling party.

I have said thus much on this article, not because I considered it necessary for my defence, for I am as innocent of the publication of this article as either of you gentlemen ; but I have spoken rather in behalf of others than myself, who may be so unfortunate as to be drawn into these toils. I trust, therefore, that you, gentlemen, not only in relation to this article, but also in relation to the other two, when you shall have as patiently heard what I have to say for myself as you have listened to me on this, will, by your verdict, put an eternal *veto* on this ill advised and altogether misdirected prosecution.

Gentlemen. I shall now call your attention to the second article in the indictment. An article which, owing perhaps a little to the coarseness of the language, and more to religious prejudice, has not been yet fully understood ; or if it has been understood, and not misrepresented, I must confess I do not understand it. I regret, gentlemen, that I cannot wholly exonerate myself from this article as clearly as I have the first. But, however fatal the consequences may be to me, I will not undertake nor try to make you believe any thing which is not strictly true. I am no lawyer, neither has it ever been my province to make falsehood appear like truth, or truth look like falsehood. That article is a communication from a well known writer, a gentle

man of the first respectability and standing in society, a gentleman who would no more think of being guilty of blasphemy than he would of being guilty of murder. His communications have been always very acceptable ; so much so, that, though I generally looked them over, they had often been put in the copy drawer without being previously examined by me. This article came just before I had occasion to leave the city, and the compositors wanting copy, this was given them without previous examination. The first side of the paper, which contains the first article was worked off before I returned. But this was handed me in slips, for the purpose of what we call proof reading, which is more for the sake of detecting any typographical errors there may be, than for the sake of understanding the article ; and I do aver that it never occurred to me, no, the thought never struck me that the article contained any thing that could be construed into blasphemy, till I was shown it at the same time I was shown the other article, which was only the day before I was arrested.

Now, gentlemen, if this should be construed into blasphemy, and blasphemy in me too, is it not a hard case ? Put yourselves in my situation, and then ask yourselves, would it not seem to be one of the most unfortunate and most cruel cases that has happened in these United States since the days of witchcraft ? You must look there, and there only, to find a parallel. Merely for an inadvertancy, to make the most of it, a man is to be condemned for the supposed horrid crime of blasphemy.

But I contend, gentlemen, that there is no blasphemy in the case ; neither was it so intended, nor will the words fairly admit of such a construction. If they will, then nobody is safe. But we must have our words all gauged by a theological measure, and all weighed in a theological balance, before it will do to utter them from our lips, or to put them on paper.

It will not do to say that both satire and ridicule are not allowable in controversy even on religious subjects. They are used by the most powerful christian writers themselves, against other sects in whose doctrines they do not believe ; they are used by all christian sects against infidels ; and why should not unbelievers be allowed to contend with christians on their own ground, and fight their arguments with their own weapons ? Yea, we have several specimens of the most keen satire we find any where, in those very scriptures called holy. What said the prophet Elijah when he tantalized the prophets of Baal about their god, in whom he did not believe ? 1 Kings xviii. 27. " Elijah mocked them, and said, cry aloud ; for he is a god ; he is talking, or he is pursuing, or he is in a journey, or peradventure he sleepeth, and must be awaked." Here are exactly the words I use to Mr White-

more, 'a god,' of which I shall speak hereafter ; 'for he is a god ;' but he is here also represented like an *old gentleman* who might be engaged in a conversation just at that time ; or like a warrior, pursuing his enemies ; or like a traveller on a journey ; perhaps he is gone to get up a revival some where, to drive women and children to distraction, and cause some to commit suicide ; or he may have fatigued himself, (for a god that labors must have rest and refreshment) and therefore has gone to sleep, and must be awaked ! Now what must the prophets of Baal think of Elijah ? Would they not consider him a blasphemous wretch ? He said all this about a god in whom they believed, and whom they worshipped, and to whom they had been *praying* from morning till noon, saying, 'O Baal, hear us !' If they had only had the law in their favor, they would have very probably said as the Jews did on another occasion, 'We have a law, and by our law this man ought to die.' John xix. 7. But it was not the god whom Elijah worshipped of whom Elijah spake ; neither is the God spoken of in the article we are now considering, a God in whom the writer believed, nor is it the true God ; and if the true God is not spoken of nor meant, then the true God cannot have been blasphemed in that article.

I am utterly surprised, gentlemen, that christians have not perceived the predicament in which they place themselves by taking any offence at this article. What is it but a frank acknowledgement that the coat fits them ? Birds do not generally flutter much till they are hit. For the moment they admit that this is their God, how can they possibly avoid the point of the argument ? But as the term god, like many other terms, is used in such a variety of senses, if christians had only said, what I apprehend the most discerning christians will say, 'It is not our God who is thus represented, a God who is every where present, who changeth not, and is without even a shadow of turning ; but the writer has raised a *man of straw*, a creature of his own imagination ;' such an argument would have satisfied them that there was no blasphemy in the case, and at the same time it would have done the christian cause more good than a thousand prosecutions such as this, ever will or ever can do.

It appears that the people of God have always been more or less given to idolatry. They were so in ancient times, they are no less so now ; for any object set up in the heart, or in the imagination, as an object of divine worship, aside from the true God, is as much an idol, and the worship paid to it, idolatry, as any of which we read in the bible. In the days of Gideon, Baal had as many, and probably more worshippers than the God of Israel. He had his altars and his groves devoted to his worship. But Gideon cast down his altar and cut

down one of his groves. He did not dare to do it in the day time, however, lest the people should rise against him ; but he did it in the night. And when the men of the city saw it, they inquired who had done it ; they undoubtedly thought that it must be some audacious blasphemous wretch ; and when they ascertained it was Gideon, the son of Joash, they went to his father, saying, ' Bring out thy son that he may die.' But what said Joash ? " Will ye plead for Baal ? If he be a god, let him plead for himself, because one hath cast down his altar." Judges vi. 31. So I say to all my accusers. Will ye plead for such a god as is represented in the article we are now examining ? A god, who, with any sort of sense, truth, or propriety, can be compared with such comparisons as are there stated ? I need not repeat the last words of Joash, nor make the application ; you will understand me. * * * * The whole drift and design of that article on prayer was intended to show Parson Strong, who was then supposed to be the author of the Tract the writer was examining, his error, in supposing his prayers, or the prayers of any body else, could influence the Deity, and cause him to do what he otherwise would not perform ; to show him what a predicament such opinions necessarily places the Deity in, without the least design or intention to speak irreverently of God, much less to blaspheme his holy name. I know that the writer is not alone in this opinion, but many good and sincere christians have the same opinions of the efficacy of prayer, viz : that it is altogether in the heart, mind, and affections of the suppliant, and not in the fountain which changeth not, and is without even a shadow of turning. But to think otherwise ; to suppose the efficacy is in the fountain—in God, what is it but to change ' the glory of the uncorruptible God into an image made like to corruptible man, and to birds, and to four-footed beasts, and to creeping things.' Rom. i. 23. Why was not Paul a blasphemer for using the language I have just quoted ? Because he intended it to point out what he deemed to be an error. Even so, the writer of this article on prayer used the language he *did* use, to point out what he deemed to be an error, not only in Parson Strong, but in many other christians. Now suppose parson Strong right, and the writer wrong, in point of fact, that does not make any difference as to the motive of the writer, nor render his language any more blasphemous.

But let us take another view of this subject. Suppose my constructions hitherto are wrong, and that the writer is speaking of the true God ; even then, it is not he (the writer) who places God in the predicament which he states, but he complains of Mr Strong for placing him in that predicament. His object, therefore, was to exalt rather than to debase the character of whom he speaks, which totally des-

troys the idea of blasphemy. We must look to the obvious and manifest intention of the writer.

Once more. Put the very worst construction upon the words you can put, and it is not blasphemy even then, according to the most rigid and strict letter of the law. The words of the statute are, 'If any man shall wilfully blaspheme the holy name of God,' how? 'by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world.' Here is the law and all the law that can be brought to bear upon this article. But there is nothing in the article that does any of the above named things. There is nothing wilful or contemeliuous in the article. It denies nothing. It curses nothing. It reproaches nothing. But it complains of Mr Strong and others for supposing it possible that the various and often contradictory prayers which are continually offered up to the Deity, can possibly change the divine mind, with whom we are told there is not even a shadow of turning. This is what it is, and all that it is; and although the ideas are couched in language that I regret, as I never wish to use language that is unnecessarily offensive, yet I do not perceive wherein it is or can possibly be considered blasphemous. Nothing is clearer to my mind than the fact, that the language there used, however offensive it may be considered in other respects, is not wilful, not malicious, not contumelious, or even intended as reproachful to God, but if reproachful at all, in any sense of the word, it is only reproachful to Mr Strong and others holding similar sentiments with him. I might quote authorities in abundance to show that professed christians are in the habit of using similar and even worse language against each other in the heat of controversy; and if christians will use such language among themselves, why should those who do not believe in any of their dogmas, be debarred from using language equally severe and sarcastic? It would be well, perhaps, for us all to reform in this respect, but where are we to look for the first examples? But whatever was the motive of the writer, mine in publishing that article was good; I believe the article, taken as a whole, has already done much good, and that it will still continue to do good, and that this very prosecution, only let it be continued from term to term a few years longer, will aid and assist (in a very different way from what was intended) in the laudable work. Nevertheless, if the work could go on without all this agitation on the part of the public, and suffering on my part, I should like it still better.

I think, gentlemen, that I have now set this article in its true and proper light; and having convinced you, as I humbly trust and hope I have, that there was nothing intended as blasphemous, and that there is nothing blasphemous in it, even considered in every possible

light in which it can be justly viewed, I shall now call your attention to the third article named in the indictment.

This, gentlemen, is an article of my own. There is no mistake on my part about it. It means all that it was intended to mean, and it means nothing more; notwithstanding the grand jury, or whoever framed the indictment, the attorney of the commonwealth, and even the Court on the former trials, have all, not very ingenuously, as I think, tried to make it mean what was never intended by the writer, and what the words in fact do not mean. In proof of this, I shall now introduce my creed, which was enclosed in the letter sent to Mr Thomas Whittemore, Editor of the Trumpet, is referred to in the postscript of that letter, and would have been inserted with it, had it not been previously inserted in the Investigator of July 12, a copy of which I shall here also produce. This creed reads as follows,

[Here Mr Kneeland presented to the Court the Investigator of July 12, 1833, containing his Philosophical Creed.]

I believe in the existence of a universe of suns and planets, among which there is one sun belonging to our planetary system; and that other suns, being more remote, are called stars; but that they are indeed suns to other planetary systems. I believe that the whole universe is NATURE, and that the word NATURE embraces the whole universe, and that God and Nature, so far as we can attach any rational idea to either, are perfectly synonymous terms. Hence, I am not an Atheist, but a Pantheist; that is, instead of believing there is no God, I believe that in the abstract, all is God; and that all power that is, is in God, and that there is no power except that which proceeds from God. I believe that there can be no will or intelligence where there is no sense, and no sense where there are no organs of sense; and hence sense, will, and intelligence, is the effect, and not the cause, of organization. I believe in all that logically results from these premises, whether good, bad or indifferent. Hence, I believe, that God is all in all; and that it is in God we live, move, and have our being; and that the whole duty of man consists in living as long as he can, and in promoting as much happiness as he can while he lives.

Written at Hebron, N. H. May 24, 1833.

By ABNER KNEELAND.

I trust that it will not be contended that this was written after my indictment, nor can any one be made to believe that I *intended* to write contradictions; whatever, therefore, the letter contains, it was not intended to contradict, but that it should be construed so as to be perfectly consistent with this creed.

Now, is this creed Atheism? And can a believer in this creed be an Atheist? Not in his own estimation, certainly, whatever he may be in the view of others.

[Here Mr Kneeland commented on his creed, by way of illustra-

tion and explanation, by which he demonstrated that it is in substance what every body believes.]

But I contend that the letter denies nothing. It asserts nothing. It declares nothing, more than a simple expression of unbelief in some things that Universalists believe, (and things that I also believed while I was a Universalist) and also other things which I believe, concerning what they believe, merely for the sake of giving reasons for my unbelief. The expression and declaration of such belief and unbelief, (for no man can help believing or disbelieving according to the dictates of his own understanding, and the evidence presented to his own mind) is no more than the right of every citizen; a right guaranteed to him by the Constitution, as well as by reason and common sense, and there is no law against the free and unrestrained exercise thereof. This right, therefore, I claim; this right I have exercised, and this right I shall continue to exercise as long as religious liberty is even tolerated in this Commonwealth.

Now, gentlemen, let us see what there is in that wonderful line about which there has been so much said, and which is thought to have been so blasphemous. 'Universalists believe in a god which I do not; but' &c. Four things are stated in that one line, all designed and intended at the time it was written, to prevent the construction which has been put upon it. And yet it would seem that not only the learned gentleman of the law, the government's counsel, but even the Court, on each of the former trials, insisted upon it that I meant what I did not intend, and what I took so much pains to guard against. I say it is misconstruction altogether.

First, observe the indefinite article *a*, 'a god,' to distinguish it from all other similar gods; for we read that there are 'gods many, and lords many.' Second, 'god,' written with a little *g*, and not begun with a capital, the same as in Judges vi. 31., where Joash says, 'if he be a god, let him plead for himself.' Third, the omission of a comma after the word god, for the purpose of showing that it was intended that the relative pronoun *which*, should agree with it. Fourth, the relative pronoun *which* is used, instead of *whom*, because we do not know of what gender an imaginary god is, and it was therefore put in the neuter gender. The sentence is a little elliptical, I confess. If all the words had been expressed that are understood, or intended to have been understood in the sentence, it would have read thus: 'Universalists believe in a god, in which god, I do not believe; but believe that their god;' &c. Here I place a comma after the word god, in both instances. Why? Because the preposition *in* is thrown in before *which*, and the word *god* is repeated; hence the clause, in which god, is separated by commas from the other members of the

sentence. I do not make this grammatical criticism, gentlemen, because I suppose that you stand in need of it; for whatever I may suppose you know about grammar, for some of you may not fully understand the force of my remarks, yet, judging from your appearance, I take it that you possess a good share of common sense; but it is intended for other persons, (with all due deference I speak it,) [turning to the Court] who are in need of going to school again, and to learn anew their mother tongue.

If any thing had been wanting in the first line to limit the word god to a particular sense, the word *their*, in the second line must surely do it; 'but believe that *their* god,' &c. evidently implying that there were other gods, and among those, the one expressed in what I call my Philosophical Creed, in which I say, 'I believe that God is all in all; and that it is in God we live, move, and have our being,' Now if this is blasphemy, every body must be blasphemers except an Atheist; for all others, so far as I know, have this faith.

Yet the learned gentleman has said, after quoting the words, 'Universalists believe in a God, which I do not,' taking care to quote the words wrong, putting a comma after the word God, where there is none; beginning the word with a capital instead of a small g, not being aware perhaps that an idol of the imagination was meant; and ending with a period where there should have been only a semicolon, and perhaps he will tell you again; 'I maintain that these words are an unqualified avowal of Atheism, a direct and positive "denying of God, his creation,"' &c. Perhaps, I say, he may tell you so again; though I hardly think he will; but if he should, you will duly appreciate it, and put it down for what it is worth.

Again, he says, under the second article in this letter, 'He [Christ] is expressly denied, and the defendant unhesitatingly declares "that the whole story about him is a fable and a fiction."' It is not so, gentlemen.

There is a wide difference between belief and assertion, or declaration; as also between unbelief and denial. I will illustrate. Some say the moon is inhabited—that there are human beings there. I do not believe it, for I have as yet seen no evidence that the moon is surrounded by an atmosphere which is essential for the support of human beings, and without which they cannot live. Is this a denial that there are human beings in the moon? Certainly not. There may be millions there for aught I know, or for aught that I have asserted to the contrary.

Now, suppose that to believe that there were inhabitants in the moon was orthodoxy; and to deny it was blasphemy, according to the law; and that this doctrine had been believed for many centuries.

without hesitation ; but as science improved, man by the help of telescopes discovered that the moon has no atmosphere, and therefore, for human beings to live there is a physical impossibility. Hence some one should say, I do not believe that the moon is inhabited ; but that the whole story about it is a fable and a fiction. He is indicted for blasphemy—and on his trial, some gentleman, learned in the law, who should happen to be the attorney of the Commonwealth, should say in his argument, ‘ The inhabitants of the moon are expressly denied, and the defendant unhesitatingly declares “ that the whole story about it is a fable and a fiction.” ’ What, do you think, such a man would be likely to say in his defence ? Would he not be likely to think, whatever he might say, I unhesitatingly declare that the whole assertion is a LIE, and if there was any motive in making the assertion, that motive could have been only to *deceive* ? How far the two cases are analogous, I must leave you, gentlemen, to determine.

As to the remaining parts of this third article, as touching miracles, the resurrection, &c. &c. I am perfectly willing to submit the whole to you with a single remark, viz : that nothing is denied here, nor in any other part of the letter ; but an expression of an opinion in relation to each of those subjects in plain, simple, open, candid, and undisguised language, about the meaning of which there can be no mistake, and against which there is no law. I have done no more than to exercise the acknowledged right and privilege of each and every citizen in these United States, whether Jew or Christian, Pagan or Mahometan, of every sect, profession, and name.

[Here Mr Kneeland read a paragraph from Mr Dunlap’s Speech, p. 35.]

Gentlemen. I have thought it necessary to say thus much to show you that the case is not, and will not be made out to be within the law. There are no facts which I have committed which the law contemplates as criminal ; no facts that constitute either obscenity or blasphemy in the sense of the law. My motives, however much they may have been misrepresented, ever have been and still are good. I wage no war against that religion which James calls pure and undefiled, viz : to assist others in need, and to keep one’s self unspotted from the world.

As to the books and pamphlets published by other people, which were brought up on a former trial, and may be again, the gentleman is perfectly welcome to all the good that he can fancy such things will do his cause—all the honor that it will reflect on himself as a gentleman of his profession, or on the Commonwealth under which he holds an important office. I shall not attempt to rob him or them of.

single iota. I only say that those things are foreign to the subject; they are totally irrelevant to this case even were his insinuations all just, as they are not *now* the subject on trial. I have my opinions on all subjects relative to the moral cultivation and improvement of man, and should have no objection to express those opinions at a proper time and place; but should any attempt be made again, as possibly there may be, to assail my private character, or that of my friends, whipping them over my back, I wish you now to understand me distinctly, as having hurled it back with perfect indignation. It is an old adage, and perhaps a true one, that the greatest thieves in a mob are generally the first to cry out 'stop thief!' Let truth alone make the application. *I do know*, gentlemen, whatever may be said to the contrary, that my character, in every sense of the word, as well as that of my friends, stands as well and as fair in society as that of any of our accusers—and that we should lose nothing in comparison even with the best of them; and I challenge any proof to the contrary.

On the first trial several witnesses were summoned, some of whom were sworn and testified to this point; but as no attempt has been made either to invalidate their testimony, or to prove to the contrary, they have since been thought wholly unnecessary, and therefore have been omitted.

With these remarks I leave the facts with you; and I might venture to rest the whole case here; were it not for other considerations; being satisfied that the additional proof that has been offered that was not adduced on either of the former trials, and the explanations which have been given, are such as must convince every rational mind that I have not been guilty, even in a legal sense, and certainly not in a moral sense, of any facts which the law contemplates as constituting the crime of blasphemy. If I have, then I contend that no one is safe.

I might here quote authorities in abundance, could I possibly think it necessary, to justify the free use of similar language to that which I have used, and language much more severe too, indulged in religious controversies by theological writers of the highest standing; but the facts are so notorious that I think it altogether unnecessary to take up your time and attention on that point. People are too apt, perhaps, to overleap propriety in the heat of controversy; but, after all, public opinion and public patronage is the best, and the safest tribunal before which such things are to be censured, condemned, and rectified. I admit that slander against a fellow being is, and ought to be punishable by statute laws, and subject the offender to heavy damages according to the nature and aggravation of the offence; but blasphemy against God, is something so vague and so indefinite, that it cannot with safety be subjected to human tribunals.

Gentlemen. We shall now consider the law on which this indictment is based. And first, the statute which has been read to you. Keep your minds steady upon a few simple facts, that they may not be entangled in the meshes of the net of legal technicalities and judicial decisions, all of which have grown out of the dark ages of inhumanity, religious bigotry, and cruel barbarism; accompanied no doubt with a real pious zeal for God, and often inflicted with the best of motives.

I wish you particularly to notice that simply to blaspheme the holy name of God—that is, simply to use words that may be construed into blasphemy, is not made penal according to this very statute. But the statute says, 'That if any person shall *wilfully* blaspheme,' &c. You may be told, if this has been done in words, you are to take it for granted that it was wilfully done, that the very act itself implies malice, &c. Of this you are to be the judges, and the only judges in this case. I agree that in overt acts, where the motive is perfectly palpable and obvious, as in murder, theft, &c. the motive is to be inferred from the act itself, unless the contrary can be clearly proved. But, even there, when the contrary is proved to the satisfaction of an honest jury, namely, that there was no malice aforethought, even then, what would be otherwise murder under the same statute, becomes nothing more than justifiable homicide. Why? Because the jury are satisfied that the act of killing was done in self defence, or perhaps purely accidentally, and without malice aforethought. If this may be the case when the crime, if there be any, consists in an overt act, about which there can be no mistake as to the matter of fact, how much more when the crime, if there be any, consists in mere words, and words too, in relation to a subject about which scarcely two men can be found who think exactly alike. You are, therefore, as it is your solemn duty, to take all the circumstances which have a bearing on this case into serious consideration, and reflect whether it be not possible, owing to the great variety of views that men may take of the same subject, and that words are but arbitrary and often imperfect signs to express our ideas; whether, I say, it be not possible that all that has been either said, written, or published, may not have been done with the best of motives. If such be the fact, which certainly is possible, and which I know is the fact, then it is not blasphemy even according to this barbarous and cruel law; a law as cruel as the laws against witchcraft—originated in the same barbarous age, has been handed down to us from the same source, and is as much a disgrace to our statute books. Should there be any doubts in your minds on the subject, those doubts should cause you to lean to the side of mercy; that is, did I stand in need of such clemency. But I

do not ask for mercy, for I feel no guilt, neither am I conscious of having done any wrong that can possibly amount to a hundredth part of the crime of wilful blasphemy.

But perhaps it may be said, if I cannot be convicted by that statute law, I may be by the common law ; and the spiritual courts of England may be resorted to, to prove this fact. But what have the spiritual courts of England to do with us ? The people there have an established religion—a law religion, and there blasphemies, like all other heresies, were first tried and condemned in the spiritual courts, then handed over to the judiciary to be punished. But we have reason to congratulate ourselves that we have no spiritual courts here ; and if our judiciaries are to be converted into spiritual courts, then we have the Inquisition established among us at once.

But take the common law as we find it, and admit it applicable here, and what then ? What indeed ! Why then, we have all kinds of religion here established by law ; and the dominant party of what ever sect, can prosecute, and even persecute all others to the utmost rigor of the law, and all under the same statute. Yea, should Pantheists get the upper hand, then Nature would be considered the true God, and all who should set up any other, and should preach and write against Pantheism, might be considered blasphemers and heretics, and prosecuted and punished as such, and all under the same statute. You perceive, therefore, that both the statute and common law may become, if it is to be enforced, in the hands of the ruling party, whoever may gain the ascendancy, like the flaming sword which turned every way to keep the way of the tree of life ; and whichever way it may turn, it will always uphold the strong and oppress the weak. Let these precedents, therefore, be well established in this country, and you may bid farewell to your liberties both civil and religious. You may then tune all your harps to sing the requiem of American Independence—her death song, her funeral knell, for toleration and liberty of conscience will be no more.

I shall not, gentlemen, spend my own strength, nor occupy your time, by going into the mazes of the British Courts, either spiritual or judiciary, nor try to ascertain whether the idea that christianity is part and parcel of the common law originated in fraud or in fiction ; whether the authorities can all be traced to one hook or many ; or whether that hook be bright or rusty. These things were done, and ably done, on the former trials ; they have been since the latter, (now six months) before the public, and I trust that some of you at least have examined both sides of this question ; but whether you have or have not, I shall mark out a straighter, safer, and much easier course for you, and show you that you need not be troubled at all with such

matters. I shall not stop to inquire whether *ancien scripture* means *saint scripture*—that is, whether the Norman French for *old records* means the *holy scriptures*, for that is not the question ; the question is, are laws which grew up in the days of ignorance, superstition and barbarism, centuries ago, in another country, and under a different form of government, now here in America, and in this nineteenth century binding on us ?

If *ancien scripture* means *holy scripture*, and *holy scripture* means what is called the Pentateuch, then he who should pick up a few sticks to make his pot boil on Saturday, which is there called the Sabbath, must be 'surely put to death,' and that too, by the special command of God. Numbers xv. 32. Now if you are not prepared to swallow this pill, take care how you swallow the common law of England in matters of religion. I ask, how can any law, made up from such a heterogeneous mass of materials, be enforced at the present day, as the law of this land ?

The people of England could no more make laws for us, than they could live for us ; neither are their laws binding upon us any further than we have adopted them ; and if we have adopted their law religion, then we have adopted and nourished in our bosoms such a hydra-headed monster that nothing short of the arm of a Hercules will ever be able to destroy. But if such a religion has been adopted by judges and lawyers, as such, it never has been, and I trust it never will be adopted by the people of this Commonwealth, much less has it been adopted by the free citizens of these United States.

We live for ourselves, not for the dead ; and it is perfectly absurd to suppose that the laws or customs during the days of ignorance, superstition and barbarism, should now be binding on us. These things will do for lawyers to harp upon, but they can have no weight with men of sound minds, who are in possession of reason and common sense.

But even admitting (what is by no means admitted) that a law religion may be established, and has been established in this country, and that it has not been abrogated by the constitution ; and admitting also that the sixty cases or more which were brought up on a former trial, and may perhaps be brought up again on this, were all correct decisions ; and even then, (and this gentlemen, is what I wish you particularly to notice) it does not necessarily follow that I am guilty of blasphemy. You will perceive that in all these cases the words, both in matter and manner are very different. As, for instance, in the case at Pittsburg, Pa., where, in the heat of debate a man as it is said, (but there is no knowing ; for you see how words have been misconstrued in this case, and they might have been equally misrep-

resented there ; but it is said the man) called Jesus Christ a bastard, and his mother a — what those words would imply. Is there any thing like this in my case ? Not in the least.

I know it has been insinuated that the first objectionable article implies that Jesus was born an eunuch. It is not so. No such idea is either stated, implied, or insinuated. The idea is, not that he was born an eunuch, but that he was begotten by the holy ghost ; though if he had been born an eunuch, it is no more than what Jesus himself said, according to the account, was true of some other men, if not of himself. Matt. xix. 12. But there is nothing in either of the articles complained of, that implies or insinuates that Jesus was not a proper man, and even a perfect man, unless his being begotten by the holy ghost would so render him. I know it is said in a human creed, he was perfect god and perfect man ; two distinct natures in one person ; but this is a mystery I cannot even pretend to understand—reasoning from analogy I should suppose it far otherwise ; but I cannot state what I think here, lest even the truth itself should be thought to be blasphemous.

But I need not enlarge upon this subject, because, whether we appeal to the statute or common law, it is so vague and indefinite in its meaning, so uncertain in its application, and so dangerous to attempt to enforce it, that no wise and prudent juror, I am sure, will ever undertake, except in the most indubitable case, to establish such a dangerous precedent.

But lest, gentlemen, it should be said that an attack on the doctrines of christianity, or on the doctrines supposed to be contained in the bible, is ridiculing the holy scriptures, and therefore an attack on morality, and therefore an offence at common law, I shall read a few pages from the speech of my learned counsel on the former trials, on this subject.

[Here the defendant read from Mr Dunlap's Speech, page 74 to 81 inclusive.]

[After mentioning Confucius, page 78, Mr K. added.]

Confucius, gentlemen, the Chinese philosopher, lived 500 years before the commencement of the christian era ; he promulgated that moral maxim which has been emphatically called the Golden Rule of the gospel, more emphatically expressed than we find it in the New Testament, namely, in these words : ' Do unto another what you would he should do unto to you ; and do not unto another what you would not should be done unto you. Thou only needest this law alone, it is the foundation and principle of all the rest.' Isocrates, also, a Grecian philosopher, who lived 300 years before the christian

era, taught the doctrine of forgiveness in these words: "You will conquer anger, if you behave yourself towards offenders as you would have others behave themselves toward you when you transgress."

How happy, indeed, it would be for mankind, if these Golden Rules were more observed and put in practice at the present day than what they now are. A practical application of these rules in the present case, would reflect no dishonor upon the Commonwealth of Massachusetts.

[Here the defendant continued to read from Mr. Dunlap's Speech.]

But, gentlemen, I shall not enlarge upon this topic, nor go more minutely into it, for reasons already given. What I shall farther say on this point, and also on the Constitution of the United States and of the State of Massachusetts, will be but a little more than to read a few extracts from the Speech which I now hold in my hand, which has already been twice delivered in my defence, in which the arguments are perfectly clear to my understanding, and I have seen nothing that either answers or refutes them.

[Here the defendant read from Mr. Dunlap's Speech, from the bottom of page 84, to the end of the paragraph on page 91 inclusive. Also from page 93 to page 107 inclusive.]

But, gentlemen, I shall spare myself the labor of reading, and you the pain of hearing even so much as the outlines of the horrid and bloody persecutions which have disgraced the christian name; the thought of which is enough to make the blood chill in our veins. I shall bring you by a much shorter route to the final conclusion. You have only to ask yourselves these questions, Has Abner Kneeland disturbed the public peace? That he has disturbed the peace of priest-craft may be admitted; but you must find a law which prohibits him from doing that before you can condemn, or the Court can punish him for it. Has he obstructed others in their religious worship? This will not be pretended. May we not then inquire, when you hear the clamor, 'Away with him,' &c. 'Why? What evil hath he done?' The only answer there can be given to these questions, is, 'We have a law, and by our law he ought to die.' John xix. 7. Remember, gentlemen, the people have a law too—and you are of the people—you represent the people—you are placed in those boxes to see that the people's law is not infringed upon. The Constitution is paramount to all law in criminal cases. You are the judges of that law, and the sole judges of that law, as well as of the facts in this case; otherwise, what is a trial by jury but a solemn mockery? You will receive the instructions the Court may give you, as well as these

of the Attorney General with all due respect; but they cannot judge for you, you must judge for yourselves; and you are accountable to the people and to your own consciences, which is God within you, how you discharge that duty.

Should you pronounce me guilty for an indelicate word, which crept into my paper in my absence, and without any knowledge; a word too that is in all your common school Dictionaries, where your children may see it every day, and understand its meaning—why, gentlemen, the suffering may be mine, but the stigma will be yours. I have your names, and they will be handed down to posterity with all the honor, or rather *dishonor* that such an act can confer upon you; that is, when the subject shall be viewed as it will be, impartially, and without prejudice. On my life, I had rather be the victim than the victor in this case, provided I must be condemned.

Will you pronounce me guilty for having been so unfortunate as to have an article inserted in the paper of which I have the honor to be the editor, and in which duty I take a laudable pride in conducting according to the best of my abilities, which article was intended not to reproach any thing sacred, but to ridicule a doctrine, which, as you must have perceived, cannot be fairly supported by scripture—which is altogether disbelieved by a large portion of the christian community, and the scriptures on which it is built are supposed by many christians themselves to be spurious, and which is altogether contrary to reason and common sense? If so, how will you be able to reconcile your verdict with the Constitution? Can you then say that I am not, '*restrained in my person, liberty, or estate, for my religious profession or sentiments*,' the very words of the constitution? Why, I have already suffered all these, to the damage of more than five hundred dollars; and but for my friends must have been already imprisoned. And even now, I am suffering a part of the penalty of the law, that of being bound to good behavior, before there has been a final decision of Court against me. And this is what you call a land of freedom, of toleration, of liberty of conscience and of the press! What a soleran mockery!! What a profanation of those terms!!

Will you pronounce me guilty of blasphemy because I have had an article published in my paper, not my own, on prayer, in which the obvious meaning of the writer was to correct what he deemed to be an error in a fellow being, in which there was obviously no intention of reproaching God, much less '*contumeliously* reproaching' him? If that should be considered blasphemy, how few christian writers will escape, and how dangerous it would be to establish such a precedent! Is there not, to say the least, room to doubt? If so, that doubt should certainly operate in my favor.

Will you pronounce me guilty of blasphemy because I have honestly expressed my opinion about God, about Jesus Christ, about miracles, about the resurrection of the dead, immortality and eternal life? Have I not an undoubted right to express my belief and disbelief in relation to all these subjects? The Court, on the former trial, admitted that I had such a right; that I have even a right to avow Atheism, (which I say I have not done) if I only do it in decent language. I think I might challenge any one to write an article, containing the same ideas, in more decent and more respectful language than my letter to the Editor of the Trumpet, which constitutes the third article in this indictment.

Gentlemen. Look at me! What do you see or perceive in me that savors either of vice or malice? You see a man standing before you who is rising of sixty years of age; his head silvered over with the effects of sickness, of trouble, of labor, and of study; who now for the first time in his life, or under the first indictment, is arraigned before a human tribunal for a supposed high crime and misdemeanor—no less than an obscene and blasphemous libel against God. How can you suppose me even capable of being guilty of such an offence? Have I not proved to you that the God in whom I believe, lives in me and I in him? Hence we are inseparably connected, and therefore I can no more deny God than I can deny my own existence. I can no more curse, revile, or reproach him than I can curse myself; and were I to do either in words, it would not prove me a blasphemer, but it would prove me insane. I should be a subject of commiseration, not of punishment; I should deserve a hospital, not a prison; and ought to be put under the care of the most skilful physician, not the sheriff.

Little did those who were the cause of getting up this prosecution think where it might end. Little did they imagine that those who profess to be christians, and christians of high standing too, would so soon publish an article which would cause the Attorney General to be called upon, as he has been in some of the public prints, to prosecute the publisher for the same offence. But such has been the fact, as I presume is well known to you. And if you convict me, who knows but it may be their turn next?

The article in the Christian Examiner, for July last, to which I allude, is more clearly within the law, I think, than any thing that I have published. It absolutely asserts that a great portion of the canonical scriptures are not the 'Holy Word of God;' and also that Jesus Christ assumed a title and character that did not belong to him. What is this but reproaching the 'canonical scriptures;' and also reproaching 'Jesus Christ,' or what is tantamount, of using dissimulation.

at least, not to say of being an impostor? But lest you may suppose that I accuse them wrongfully, I shall give you their own words which are surely within the law, or else nothing that I have published can be so construed. But this comes from a source professedly christian, and therefore is suffered to pass with impunity.

In speaking of the New Testament writers, the writer says; p. 343.

"We think it consistent with the divine authority of Christ to admit, that the Evangelists and Apostles have applied the language of the prophets to persons and facts, to which in the mind of the prophets they had no relation, and this, not merely for the purpose of rhetorical illustration and confirmation, but of proving a real fulfilment of prophecy. Such an application of Is. vii. 14, is, in our opinion, made in Matthew, i. 23, and of Psalm xvi. by Peter and Paul in Acts ii. 25—31. xiii. 34—37."

Then, after going into a labored as well as learned argument to show that the Evangelists as well as Peter and Paul did not understand the language of the prophets, the writer says: p. 355.

"The contents, then, of the sixteenth psalm are as follows: The author and subject of it, probably David, prays for help, acknowledges his dependence upon God, expresses his hatred of idolatry, his satisfaction with the condition assigned him, his confidence in divine aid to deliver him from threatened calamity, and his hopes of future protection and favor. *The death or resurrection of no person is expressed or implied in the psalm.*

"But we have admitted that Peter and Paul found the death and resurrection of Jesus in this psalm. Consequently we admit that they were in an error. And if so in this case, they may be so in other cases where they have used the language of the Old Testament.

"Human reason must necessarily be the interpreter of the Bible. If this reason, exercised in subjection to established laws of interpretation, bring us to conclusions different from those to which the Apostles arrived, we cannot give them up without undermining the authority of Revelation. For how do we know that we understand the meaning of any interpretation of a passage by the Apostles? How do we know, for instance, that the Apostles Peter and Paul supposed Jesus to be referred to in the sixteenth psalm? How, but by the exercise of our reason? We have admitted, what some have denied, that these Apostles did understand the psalm, as above stated. But we are not more confident of it, than we are that our own interpretation of the psalm is correct. We must bid defiance to more numerous and weighty reasons, in order to make that psalm apply to any one but David, or one of his age, than in denying that Peter or Paul supposed Jesus to be the subject of any part of the psalm.

"The truth is, that the Evangelists and Apostles never claimed to be inspired reasoners and interpreters. Where is the passage, in which they say, 'This interpretation is true. I know it by miraculous inspiration'? They reason with their hearers in the mode prevailing at the time, as in the case of the psalm above mentioned, and thus refer the matter to the tribunal of common sense. *Their arguments are not conclusive to us, because the state of opinion in the nineteenth century, is different from what was the state of opinion in the Apostolic*

age. The Jews of that age had no correct views of the nature of language, or the principles of interpretation as has been mentioned before. The Apostles partook of the errors and prejudices of their age in things in which Christ had not instructed them. There is no evidence, nor any color of reason for the supposition, that, when Christian truth was poured into their minds, all their previous notions and prejudices were poured out."

Again speaking of the Bible, he says : p. 358,

"Men hear the Bible constantly represented as the word of God ; and yet they know that it contains much which is not the word of God. Their objections fall to the ground, when the true character and use of the Scriptures are explained ; when the distinction is pointed out between the revelation itself, or the word of God, and the records of this revelation, the history of those to whom it was made the accounts of its propagation, and the various arguments used by its early advocates for its defence and recommendation. It is true, that the Bible contains the word of God. It contains also many things which have no claim to that appellation. It contains probably all that could be collected, at a certain period of the literature of the Hebrews, their history, poetry, ethics. Besides the word of God, it contains the words of many wicked men. It contains some unwarrantable language from the lips of pious men, such as Job, [Job, chap. iii.] the Psalmists, [Ps. lxi. cix. cxxxvii.] and Jeremiah [xviii. 21-23.] The early history of the Jews enters sometimes into disgusting details, unsuited to the taste and moral feeling of the present age. The New Testament contains histories of the life and discourses of our Divine Teacher, the acts and teachings of his Apostles, and various letters argumentative and hortatory, instructive in all ages, but specially adapted to the circumstances of the early Christians. Now when you call the contents of this whole collection of writings the word of God, or divine revelation, you assert a proposition which is not true, and which is a stumblingblock to thousands. The divine authority of Christ can be maintained. The truths of his doctrines and the obligation of his precepts rest on a foundation which cannot be shaken. They are worthy of God, and come from one whose authority was established by miracles. The correctness of all the reasonings, sentiments, and statements contained in the Bible is by no means an essential part of the belief of a Christian."

This is certainly denying some part, and I should think a very great part of the Bible to be "the word of God, or divine revelation ;" but whether that is "exposing them, or any part of them, to contempt and ridicule," (which are the very words of the statute) I must leave for others to judge. Or whether Jesus acted a very honorable part in trying to make the Jews believe that he was the Messiah, "who was to come," in the sense of the Jewish prophets, I will not undertake to say ; but the writer of the article before us, says : p. 360.

"Here he evidently explained to Pilate, that he claimed to be a king in the sense of being an extraordinary promulgator of the truth ; in being the authoritative guide of all who are led by the love of the truth to listen to his voice, and obey. We may therefore suppose that he assum-

ed the title of Messiah in a similar sense, and that, when he affirmed that he was the Messiah, he only affirmed in figurative language, that he was the inspired teacher from God, for whose instructions the Jewish dispensation had been a preparation, and who was designed by God to fulfil his great purposes in relation to the instruction of the Jewish nation and of the world."

"Yes, I am king." In what sense? In the Jewish sense? No. In the Jewish scripture sense? No. What sense then? Why, in a totally different sense from what the Jews ever knew any thing about; for "my kingdom is not of this world!" And "we may therefore suppose that he ASSUMED the title of Messiah in a similar sense"! Now for what purpose was such an assumption, unless to deceive the Jews and make them believe that he was what he was not? For he had no right to suppose that they would understand either the word *king*, or the word *Messiah* in a different sense from what they had been accustomed to understand those words. But the writer says: p. 363.

"He might, therefore, assume the character of Messiah, though he had not been the subject of miraculous prediction."

You see, therefore, that the supposed Old Testament prophecies, as relating to Jesus and fulfilled in him, are completely given up as not relating to him, nor as being fulfilled in or by him. All rests now on the miracles of the New Testament.

Thus, gentlemen, you perceive the liberties taken, and the latitude of expression used by christian writers themselves, which I here offer as a justification of what I have published.

Yes, gentlemen, I say as a justification: because this very article from which I have read these extracts, has been more than once complained of to the Grand Jury, and a bill, as I have been credibly informed, was once found against it; yet, after laying a whole month without the indictment being made out, the matter was (somehow or other) called up again, and the vote of indictment was reconsidered, and the indictment quashed. This, then, I am justified in saying, has passed the ordeal of a Grand Jury, and has there been justified, or at least not condemned, and therefore I offer it in justification of what I have published; for it is certainly more clearly within the law than any thing I have stated. Should you convict me, therefore, may I not ask in what a sad dilemma will you place the government of this Commonwealth--?—that of justifying an open breach of the law when it comes from a professed christian source; but of condemning a less breach of the law when committed by an unbeliever! Reflect seriously, gentlemen, before you act, what may be the consequences of such gross inconsistency.

In closing I must say, I feel more for the disgrace that this proce-

cution has already brought upon my native State, than all that I feel for myself, my children, or my posterity. Say what you will, posterity will view it in the same light as the most discerning view it now ; that is, in the light of persecution. There has not been an argument used, nor is there any that can be used in favor of this prosecution, that could not as well be used on a trial for witchcraft. The law still exists against that impossible crime as it does against this. As many precedents, cases, and decisions, might be urged in favor of a verdict—the common law of England could be brought in as well ; the only thing against it, is, it would not be quite so popular. Is blasphemy a bible crime ? so is witchcraft ; and the law is there, ‘ Thou shalt not suffer a witch to live.’ Exod. xxii. 18. What, I ask, but the light of science has driven all the witches out of the country ? And a little more general diffusion of the same light will send all the blasphemers after them.

GENTLEMEN OF THE JURY. A few words more and I have done. It is very possible that a knowledge of the fact that twelve men have already decided, and eleven more out of twelve, placed where you are now placed, were ready to decide against me, may have some weight on your minds ; but recollect, you are in the possession of several important facts in relation to the case, of which they were ignorant ; and that none of them had heard what I now have said for myself ; it is therefore very possible that even they, were they in your places, and having heard what you have heard, would now think differently from what they thought then. One, however, thought differently ; whose reasons, I trust, you have seen ; or if not, some of them must have suggested themselves to you from what has now been said. I shall therefore not repeat his reasons. I wish you not to be biassed by the opinions of other men, whether they were for me or against me, but to act your own judgment. Nothing remains for me now, but to thank the Attorney General, that he has permitted me to say all that I have thought it necessary to urge in my behalf ; the Judge for his kind indulgence ; and you for giving me such a patient and attentive bearing. And if the Shylocks of my accusers, whoever they may be, insist upon it, give them their pound of flesh ! but at the same time warn them that if they draw one drop of blood from the life of the Constitution, the consequences may be more serious than they at present imagine.

ERRATA.

Page 2, line 18, for consciencess read consciences.

— 7, — 1, — (I do not admit) read (which I do not admit).

— 14, — 19, — places read place.

— 10, — 15, — blasphemers read a blasphemer.

— 23, — 5 from the bottom, for these read those.

REVIEW

OF THE

PROSECUTION

AGAINST ABNER KNEELAND,

FOR

BLASPHEMY.

BY A COSMOPOLITE.

↓
(David Henshaw)

Bern Blodgett

BOSTON:

1835.



“STRIKE, BUT HEAR ME.”

Among all the incidents of awakening interest which have excited the action, and called forth the opinion of the public during the past year, there is none which has occurred more vitally affecting, for good or for evil, according to its final termination, the civil liberties of the country, than the trial of Abner Kneeland, on an indictment for blasphemy. It strikes at the root of the liberty of conscience, and the freedom of the Press; and involves in its consequences the preservation or the destruction of the free institutions of this country.

In attempting a review of this case, and in discussing the questions involved in the prosecution, we are not unmindful of the perils in our way: of shocking the prejudices of the truly pious, the honestly superstitious, and of provoking the vindictive hatred of mercenary and malignant hypocrites. We enter upon the investigation with no intention of assailing or defending the creed of any, further than may be necessary to illustrate their effect upon the civil and religious rights secured to the people of Massachusetts in the fundamental law, the Constitution of that State—further than may be necessary to rescue that important instrument, which the fathers left for an inheritance, from the ruthless grasp of blind fanaticism, prowling ignorance, canting hypocrisy and judicial usurpation.

The indictment is for a blasphemous libel, in publishing certain articles alleged to be a violation of the law of Massachusetts against blasphemy, passed July 3, 1782. As we do not intend to confine our remarks to professional technicalities, nor to seek shelter under legal quibbles, but to show the protection which the Constitution intended to give, and does give, to all citizens freely to express and openly to publish their opinions upon religious subjects, we deem it needless to state more formally the nature of the charge.

We propose to examine first, the principles upon which the prosecution is based—and secondly, the manner of conducting it. The first branch of the inquiry involves a consideration of the constitutional rights of the citizens of Massachusetts—the second, the conduct of the Court, the prosecuting officers, the jurors, and the public press.

The first question which meets us in our progress then, is, as stated by Mr. Dunlap, the learned, eloquent and gifted counsellor for the defendant in his two first trials, does the offence come within the statute, and does the statute come within the constitutional power of the Legislature. If we show, as we trust we shall, that the law is not within the Constitution, it will be unnecessary to prove that the offence is not within the statute.

The following are extracts from the law:

“*Be it enacted, &c.* That if any person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing or reproaching Jesus Christ or the Holy Ghost, or by cursing or contumeliously reproaching the holy word of God, that is, the canonical scriptures as contained in the books of the Old and New Testaments, or by exposing them or any part of them, to contempt

and ridicule, which books are as follows: [*here they are all named*] every person so offending shall be punished by imprisonment not exceeding twelve months, by sitting in the pillory, by whipping, or sitting on the gallows with a rope about the neck, or binding to good behavior, at the discretion of the Supreme Judicial Court, before whom the conviction may be, according to the aggravation of the offence."

We extract such portions of the Constitution, as, we believe, renders this statute unconstitutional. The second article of the declaration of the rights of the inhabitants of the Commonwealth of Massachusetts, is as follows:

"It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the Supreme Being, the great creator and preserver of the Universe. And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, OR FOR HIS RELIGIOUS PROFESSIONS OR SENTIMENTS. *Provided*, he doth not disturb the public peace or obstruct others in their religious worship."

Article 16th, says,—"*The liberty of the press is essential to the security of freedom in a State; IT OUGHT NOT THEREFORE TO BE RESTRAINED IN THIS COMMONWEALTH.*"

The 6th Section of the 6th Chapter of the Constitution of the State, is as follows:

"All the laws which have heretofore been adopted, used and approved in the Province, Colony, or State of Massachusetts Bay, and usually practised on in the Courts of Law, shall still remain and be in full force, until altered or repealed by the Legislature; SUCH PARTS ONLY EXCEPTED AS ARE REPUGNANT TO THE RIGHTS AND LIBERTIES CONTAINED IN THIS CONSTITUTION."

We shall proceed to give the most material points assumed on the part of the Government, including those in the several charges of the different Judges, before whom the trial was had, with such comments as may be deemed necessary for the occasion, before comparing what we believe to be the meaning of the Constitution, with the law.

The County Attorney, Mr. Parker, said he should bring to the notice of the jury—

"1st, The statute law relating to the offence. 2d, the common law; and 3d, the importance and paramount duty of enforcing these laws."

He further avers,

"That the law is constitutional, and that the *Christian Religion*, at the time of the adoption of the Constitution, was *part and parcel of the Constitution.*"

He further avers,

"That the principle of the laws has been the same from the earliest record of the Colony—the Colony laws against atheism and blasphemy remained until the Revolution. * * * But the common law is also retained by the Constitution. * * * And this common law is still the law of the land as to crimes and civil suits, except so far as *altered by the Legislature.* * * * But if the case fall not within the *statute*, then such an obscene and blasphemous libel is an offence at *common law*, and punishable as such by the Court."

The following, among other cases, are cited to prove his positions:

"The principle of that law [the common law] is this; that the law will restrain and punish all open and public attacks upon religion—upon the authority of the scriptures, and upon the founder of christianity, because the belief in religion so construed, constitutes the only binding obligation among men, and its denial tends to the subversion of all law and order in society."—3 *Merrival*, p. 390. See 49th page of *Parker's Speech*.

"I shall claim," continues the Attorney, "the right and privilege, in some part of this trial, to read these passages and citations in the hearing of the Court and jury, because in the language of Chief Justice Hale, 'The common law is not the product of the wisdom of some one man, or society of men, in any one age; but the wisdom, counsel, experience and observation of many ages of wise and observing men.'"

Among other authorities cited, are the following, and as they all go to maintain the same principle, it is unnecessary to cite many:

"Blasphemy is not only an offence to God and religion, but a crime against the laws, State and Government, and therefore punishable by indictment; for to say religion is a cheat, is to dissolve all those obligations whereby civil society is preserved: and to reproach the christian religion is to speak in subversion of the law. This is said by Lord Chief Justice Hale, than whom, it has been often said, that a wiser man, a better lawyer, and one who had a greater respect for the rights and liberties of the subject, Great Britain never produced."

"Lord Raymond declared in *Woolstone's case*, christianity in general, is part of the common law, and therefore to be protected by it. In *Pearson's case*, Lord Chancellor said, 'prior to the statute, blasphemy was an offence punishable at common law.'—*Parker's Plea*, pp. 9 and 10.

"17 *Howell's State Trials*, pp. 154.—'In the year 1727, *Rex vs. Curl*—Religion is part of the common law; whatever is against religion is against the common law.' * * * 'Blasphemy is punishable by common law.'—*Dane*, p. 669." "In *Woodston*, pp. 512—'Christianity, as well as the law of nature, have ever been considered as parts of the common law.'"

Mr. Parker further states, pp. 62—that

"All the laws adopted, used, and practised upon, before the independence of the Commonwealth, are expressly continued in force by the Constitution, until altered or repealed by the Legislature. The statute against blasphemy does not alter or repeal either the common law or the Colony laws in relation to the body of the crime, but only as to the extent of the punishment."

The foregoing are some of the points made by the prosecuting Attorney. We shall proceed to make extracts from the charge of Judge Thacher, as follows:

"You will perceive, gentlemen, that the defendant * * * is on trial for writing and publishing an obscene, impious and blasphemous libel, against the Supreme Being and the Christian religion, whereby it is alleged that he has offended against the common law, and also against the statute of the Commonwealth. * * * This description is founded on the offence of blasphemy as described in an act

of this Commonwealth, passed 1782. * * * The proper meaning of blasphemy at common law, appears to be profaneness against the general principles of religion and morality."

[This seems to be an extremely *precise* definition—about equal to one made on a different occasion by a wise law giver, who proposed to enact that every stage driver should be fined fifty dollars, if he drove at an *unreasonable speed*.]

* * * "But you will carefully observe, that the defendant is not on trial for the principles of his religious faith. * * * There is no such offence known to our laws as heresy in belief, or as non-conformity to an established *form* of worship. The law of this Commonwealth recognises no standard of faith, nor any established form of worship." [How does this comport with the assertion of the Attorney General, the highest law officer of the State, that Mr Kneeland's offence was a denial of the "God of the statute"?] * * * "The charge against the defendant, is for publishing an obscene and impious libel against the Supreme Being. If an individual may be severally punished for publishing a base and injurious slander against a fellow citizen, it would seem to be a great defect in the law of a well regulated State, if there were no punishment for him who should maliciously slander Almighty God, the eternal, immutable, and infinitely perfect being, the Creator and Governor of all things, *from whom government is derived*, and by whom it is supported."

[This, by the way, is not precisely the question to be considered. It is not whether there be or be not a defect in law, but whether the law as it exists, makes the act charged against Mr Kneeland a crime. What is irrelevant to this point, the Judge, of all men, had no right to utter. If the people in framing their fundamental law, which is binding on the Legislative, Executive, and Judiciary, have decreed that this act shall not be a crime, however defective the Judge may consider it, we doubt if that give *him* the right to amend it. Besides, the idea is forced upon the mind that the Almighty might possibly, if he saw fit, protect his own reputation from the effects of slander, nearly as well as the Municipal Court do it. We know of old that kings claimed the right to govern, as a right emanating directly from God, but until this statement from the erudite judge of the Municipal Court to the contrary, we had supposed that the civil government of Massachusetts emanated from the people.]

* * * "To speak reproachfully of the Supreme Being, who is regarded by the pious as the source of wisdom, and of all good influences, has never been permitted by any civilized nation. * * * In our Commonwealth, from its earliest settlement, such irreverence has ever been regarded, both as the height of impiety and as a crime against the State. * * * An oath is an appeal to Almighty God, whose providence is believed to regard the actions of men, justice being the object of his delight, and injustice of his displeasure, to help the witness as he shall speak the truth. * * * And whoever proclaims, either in words, or by writing that there is no God, and presumes to assert that he is a chimera, a mere fiction of the imagination, forfeits his right to testify in a Court of Justice, and offends against the Constitution and laws of this State."

Here the Judge asserts that the denial of God offends against the

Constitution and laws. This is all very well, as it means to affirm the constitutionality of the blasphemy law, which question we shall consider in another place. But the Judge goes further—he has *lugged in*, irrelevantly and improperly, the question of the competency of a witness who disbelieves the existence of a God, meaning, no doubt, “the God of the statute.” We feel bound to say a few words on this subject:—This law about the competency of a witness is JUDGE law, called sometimes, common law. It goes upon the false basis, false both by the natural and statute law, that a man who believes in a God, and in future rewards and punishments, will tell the truth, fearing the wrath of God if he lie.

The statute law disqualifies a witness only for crime, and after conviction. It is a matter of punishment and penalty, and has no reference to faith. The principle laid down by the Judge, and we grant it is no new, though an erroneous principle, among lawyers and Courts, would exclude Universalists who believe not in future punishments. This principle prevailed originally less in reference to the interests of religion and truth, in a broad sense, than to the interests of a dominant sect. During the reign of Papacy, heretics were incompetent witnesses; and in turn, we believe, the Papists were pronounced incompetent. A disbelief in a God which disqualified a witness, was a disbelief in the “God of the statute”—always the God of the dominant sect. Attempts have been made to exclude witnesses from the stand who were Universalists, and if a belief in an avenging God be a necessary part of the witnesses’ creed, the Universalists ought to be excluded; and we are not sure that any of those who believe in the doctrine of the atonement, that consoling belief to knavery, would be considered competent. This principle of disqualification is unnatural, and contrary to usage in all other concerns of life. The mere faith or belief, a thing about which there can be neither merit or demerit, belief not being a matter of the will, but the child of proof, and the offspring of conviction, does not and cannot affect a man’s veracity. This, reason and common sense teach us, and so does experience. We find pious men whose word cannot be relied upon, and whose oath is no better. We find unbelievers who are known to be men of veracity; and every body practices upon this principle, every where but in our Courts. The Constitution of the State wisely guards against this violence and injustice to a witness on account of his faith, in saying as it does, in the second article of the Bill of Rights, that no subject shall be *hurt* for his religious professions or sentiments; and thus it cuts off the principles of the common law as applicable to this subject. To discredit a witness on account of his religious professions or sentiments is to “*hurt*” him, and is therefore a violation of his constitutional rights. This principle may have been and may be now, common law in England, and it may be JUDGE law here, but it surely is not natural law, constitutional law, statute law—the law of common sense, nor the law of common honesty.

Judge Thacher continues:—

“It is sufficient for us now to know that the Constitution, and this act of the Legislature which emanated from it, meant to restrain and punish all who should presume, to the disturbance of the peace, wilfully to revile and calumniate the fundamental principles of natural

and revealed religion, as they were held generally by the people of this Commonwealth. * * * If, therefore, you find, on inspecting the libel in this case, that it is both obscene and blasphemous, I think his defence will have failed, and that the defendant will have offended both against the laws and the Constitution of the Commonwealth."

We shall now take up the charge of Judge Putnam at the second trial, intending, as we before remarked, to collate the principal points of law, for the information of the reader, as laid down at each trial. One thing we take occasion to note here, and shall enlarge upon it in another place, an attempt at this trial to browbeat the jury. Judge Putnam says:—

"Have the people a right to make laws for the preservation of the religion of the State, of civil Society? * * * What government could exist without the sanction of oaths? * * * What wise government or people then, would not adopt such a system of religious belief, upon proper evidence of its truth, as a sure basis on which to rest civil institutions. * * *. It is therefore the opinion of the Court, that the statute of blasphemy under which the defendant is charged, is a constitutional law, and as such is binding on the Court, the jury, the defendant, and the whole people.

"At the same time, gentlemen, I am bound frankly to state to you, THAT THE LAW IS WITH YOU IN THIS CASE AS WELL AS THE EVIDENCE. THE JURY HAVE A RIGHT TO GIVE THEIR VERDICT, BOTH ON THE LAW AND THE EVIDENCE IN CRIMINAL CASES. * * * You may take the responsibility of disregarding the law of the land, *as laid down by the Court*, but you are sworn to decide according to the evidence. * * * The Constitution says to all men who come here, behave civilly and decently, worship as you please and where you please, or stay at home and not worship at all—argue, disprove the doctrines of others, be as zealous as you please in your own cause—all we ask is, that you should not hold up to ridicule and reproach, the religion we have been taught, and which we desire our children to reverence. You may advance your sentiments, and say what you please, but do it decently; do not reproach us and make an obscene jest of religious faith."

[Notwithstanding this solemn judicial interpretation of the Constitution, we may safely challenge the learned Judge to show any authority for it in the instrument itself, except that we have a right to worship as we please, stay at home if we please, argue and disprove the doctrines of others—and in doing this, we are not restricted by the Constitution to form or style. The religious opinions of the Court and its officers are no more under the protection of the law, than are Mr. Kneeland's opinions; and surely, the coarse invective, the vituperative insolence, personal and vindictive, that were heaped upon the defendant during the trial, but ill accord with the principles here laid down by the Bench.]

"I have," continues Judge P., "attempted to explain the grounds for regarding the law as constitutional, in the plainest manner I could, though it may not be satisfactory to you. We now come to the facts, a part of the case *wholly* yours."

[*And was not the decision on the law wholly with the jury too?*

Was it not just before fully admitted to be so by the Judge himself? Why then this form of expression? The *tendency* is obvious, whatever may have been the *design*. The tendency is to leave on the minds of the jury the impression that the law *was not wholly* for their decision. We have the best reason for believing that at the first trial the verdict was obtained against Mr. Kneeland, *solely* because the jury were impressed with the belief that they had no right to question the constitutionality of the law, as laid down by the Court. If then, the *design* of the Judge's remarks were the same as their *tendency*, it was an attempt on his part to exercise, in a covert way, powers which the law had confided to the jury, to the prejudice of the defendant, and in contempt of the legal rights of a jury, a co-ordinate branch of the Court."]

"I admit," continued the Judge, that the ATHEIST as well as any other man, HAS A RIGHT TO HOLD AND PROMULGATE HIS OPINIONS, and to MAKE OTHERS BELIEVE THEM, if he can do so by decent discussions; but he has no right to hold up the God we worship to contempt and ridicule."

This admission would seem to be enough to settle the whole question. A man has a right to hold Atheistical opinions, to promulgate them, and make proselytes to them—all this the Judge lays down as law. How then could he permit the trial to go on? The very offence charged—the head and front of it—the denial of the existence of God, he admits is no offence at all. A man has the right, a legal right, a constitutional right, to hold and promulgate his opinion that there is no God, and has a right to make proselytes to this opinion, yet he is indicted for this act as blasphemy, while the Judge urges his conviction, seemingly for the crime of bad taste. This denial must be done decently, says the Judge, the God we worship may be denied, but decently denied, for he "shall not be held up to contempt and ridicule;"—any other God you may treat as you please, but ours you must not ridicule. We have been less fortunate than the Judge in our researches upon this point, inasmuch, as we have been unable to find, either in the law of the Constitution, or in the law of common sense, any principle that should shield the God we worship from the shafts of ridicule or the blightings of derision, more than the Gods other men worship, or more than the opinions which the Atheists cherish. The crime charged in the indictment was for denying God, and thus, as the statute says, blaspheming his holy name—the offence for which the Judge presses his conviction, seems to be for ridiculing the *opinions* of others. It is to be hoped that this is a novel mode of administering justice.

But the idea that one should not ridicule the prevalent religion, which we suppose to be the meaning of Judge Putnam's "*God we worship*," and Mr Austin's "*God of the statute*," because it wounds the feelings, as Judge Thacher says, of the religious people, is preposterous. In the first place, those whose feelings are of this tender and fragile kind, need not read the censures and sarcasms cast upon their creed; and in the next place, one man's religious belief or sentiments concerning religion, is no more entitled to the protection of the law than another man's. It will never do in this free country for a believer in any religion, whether dominant or subordinate in point

of numbers, to say you shall not question the divinity of my God—you shall not ridicule the forms of my church—you shall not doubt the orthodoxy of my creed—you shall not scoff at my religion, because its truth is undoubted, its holiness divine, and it wounds my feelings to have even an expression of unbelief in it.

No man has a right, either under the law constitutional, or the law common sense, to set himself up as the only pattern of excellence—to assume to himself the attributes of the Almighty—or claim his religion to be the standard of orthodoxy for others. No man, nor no sect, has a right thus to gag investigation, and stifle enquiry. None has a right to take exceptions against those who doubt his creed, for every man has a right to combat the dogmas of any other man or set of men. He has a right to ridicule and deride the dogmas of others, just as much as he has the right to ridicule the political opinions of his opponents. Ridicule and sarcasm, and invective, are just as legitimate weapons of warfare in polemics as in politics—in law, as in literature. We have no right to disturb the worship of others, nor break the public peace, but to question the correctness, to ridicule the form, or to denounce, in terms however severe, any creed or every creed in religion, by words or in print, does not necessarily, and need not at all, disturb the worship of others. No man is obliged to listen to, or read these denunciations; and if he do, the only weapon he can lawfully use in defence, must be of the nature of those employed in the attack. A religion that cannot withstand the force of argument, the shafts of ridicule, and the thunder of invective—a religion that requires for its support, the axe, the rack and the faggot, has but weak claims to divinity, and is hardly worth protecting at such cost. A religion founded upon coercion in this world, and upon menace in the next, is surely but poorly calculated to soften the heart, to chasten the feelings, or to increase, in the aggregate, the sum of human felicity.

We now arrive at the third trial of this infamous prosecution. We shall pass over the remarks of Judge Wilde respecting the rights and duties of jurors, for consideration in another place, and select other points he has laid down.

"The charge," the Judge says, "is that of blasphemy, of the publication of a blasphemous libel. * * * And the questions for you [the jury] to decide, are, 1st, Whether the defendant did in fact publish the libel. * * * 2d, Whether this libel is a violation of the law against blasphemy—and 3d, if it is, then is the law or statute a valid constitutional law."

After laying down these propositions, he goes somewhat elaborately to work to show the benefit of restraining irreligious opinions, and among other suggestions, makes the following;—

"If then, the infidel's creed were TRUE, would it not be wise and for the good of society to prohibit the promulgation of a doctrine so discouraging to virtuous exertion, and so fatal to human happiness, and which brings us down to the level with the brutes that perish. * * * If then, religion is so essential to the maintenance of good government and good order, and the preservation of pure morals—if *it is a consolation to the afflicted, and inspires us with high hopes and lofty aspirations, is it not wise to guard it against the open attacks and reproaches of scoffers and infidels?*"

What a monstrous suggestion! Prohibit a man from seeking and promulgating a creed that is TRUE! Prohibit a man from promulgating the truth in a case of vital and everlasting importance to millions upon millions, aye, upon countless billions of the human race, now living and hereafter to be born—and to protect the propagator of a false doctrine, and falsehood, under the ægis of the law! What a shocking principle of ethics! Proclaimed too, from beneath the folds of the Judicial Ermine! It would sound more *harmoniously* from beneath the scaly covering of Orcobrand himself! What could a poor prisoner expect from a Court holding such a code of morals, a code that would make *truth, infidelity, and falsehood, religion*. Not such our creed—we have been taught that truth is valuable above all price, and we would seek it, steadily and fearlessly, now and forever, though it upturned existing religious systems, and shook even the throne of the “God of the statute.”

It surely is a wise suggestion that such a religion can *only* stand when scoffers and unbelievers in it are *prohibited by law* from assailing it. Are the people then to infer, from this prosecution, that the religion “of the statute” is of this description? We were taught christianity in a different school. We were taught that it was of divine origin—that the Almighty himself protected it, and that even the power of Satan and the gates of Hell should not prevail against it. We were taught that it was a religion not only of truth, but of charity—of kindness—of forgiveness—of persuasion—AND NOT OF COERCION.

Judge Wilde proceeds in his charge to quote the second article of the declaration of rights, in which he offers the following comments:

“Now if there is any part of this important article which is inconsistent with the statute under consideration, it is the latter part of the article, which declares that no one shall be hurt, molested, or restrained in his person, liberty, or estate, for his religious professions or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship. But it is manifest that the denial of the existence of a God is not a religious profession or sentiment, but is wholly irreligious and impious. The foundation of all religious sentiments is the belief in the existence of a Deity, or some controlling power over human affairs and the destinies of men.”

And it is by such an interpretation that the learned Judge would tear away the shield which the Constitution has thrown over the people, to protect them against persecution for their religious professions.

If infidelity, that is, a disbelief in the christian religion, or a disbelief in the Deity, or the “God of the statute,” whom no man can describe, and about whose attributes no two believers can agree, place one beyond the pale of the Constitution, then a man may be outlawed at the will of the Legislature, whenever it may choose to change the law. But this part of the charge conflicts remarkably with the law laid down by Judge Putnam in the previous trial; and we here call upon the reader to note it particularly, as an evidence of the little reliance to be placed in the vaunted knowledge of the Bench. Judge Wilde says, that the denial of a God is an irreligious and not a religious profession, and therefore he is not protected by the second article. Judge Putnam says, “I admit that the Atheist,

[that is, one who denies God] has a right to hold and promulgate his opinions, and to make others believe them if he can do so, by *decent* discussion."

Here is a direct conflict between the law as laid down in these two trials of the same case. We happen to differ in part from each—for we hold that the Atheist, as well as every other man, has a right to entertain and promulgate his opinions in any way he may choose, "provided he doth not disturb the public peace, nor obstruct others in their worship." This *right*, which is secured to every man under the second article, about religion, and under the 16th article, which secures the liberty of the press, is not affected, whether it be decently or indecently exercised—the Constitution takes no cognizance of matters of literary taste. It meant to secure, and it has secured, perfect and unrestricted liberty of the press, taking the evil with the good, and confiding in the natural morality of the people to guard against its obscene abuse. No censorship of the press can be established, and it is not competent in the Legislature and the Judiciary, to use a vulgar phrase, "to whip the devil round the stump," and fine and imprison a man for printing any thing, and then to say this is not infringing the freedom of the press, it is only checking its abuse. The law of libel can only apply to individual wrong—All men have the protection of the law, and one man has no right to use his rights so as to wrong another; but as for public libels, of the kind now under consideration, they can only be sustained by trampling under foot the first principles of the Constitution.

"The foundation of all religious sentiment," says the Judge, "is the belief in the existence of a Deity, or *some controlling power* over human affairs and the destinies of men."

Well, what is this controlling power? Is it special Providences, is it a belief in a power propitiated by prayer and swerved by supplication?—or is it a power over the destinies of men, operating by fixed and immutable laws? If the former, the believers in the evil spirit have the protection of the law—if the latter, it is the doctrine, as we believe, of the Atheist, who can also claim the benefit of the Judge's accurate definition.

Judge Wilde continues:

"That part of the statute, therefore, which enacts that no one shall deny, curse, or contumeliously reproach God, is not only not inconsistent with the second article of the declaration of rights, but is in conformity to it in letter and spirit. * * * The remaining part of the statute stands on a different footing; for you will observe that the *denial* of the divine *attributes* of our *Savior* and even of his *existence*, is not prohibited by the statute, nor is the denial of the existence of the Holy Spirit, nor of the truth of the Holy Scriptures prohibited. * * * It seems to me clear, that the second article of the declaration of rights will admit of no such construction, and consequently that the statute against blasphemy is a valid law, and in no respect conflicts with any part of the Constitution; while it tolerates all religious opinions, however erroneous, and admits religious controversies, however useless and pernicious they may be; and does not even prohibit the denial of the truth of christianity, and the attempt to support such *denial by reason and argument*;—while it thus secures the liberty of

conscience, and the freedom of the press, it does prohibit blasphemous libels, denying the existence of the Deity, his creation, government, and final judging of the world, and the exposing the holy scriptures to contempt and ridicule, which cannot fail to shock the feelings of all pious, well-disposed christians, and to poison the minds and corrupt the morals of the young, the ignorant and the thoughtless. And what reasonable man will say that such prohibition is unconstitutional, unreasonable, or unnecessary."

Here is matter beyond our comprehension. The law permits controversies on religious matters, however useless and pernicious, and does not prohibit the denial of the truths of christianity, (as laid down in the Holy Scriptures) it does prohibit blasphemous libels to bring them into contempt. If denying their truth be not calculated to bring them into "contempt," we must confess that such an anomaly could belong only to the Judge's new school of ethics. We shall not attempt to reconcile this irreconcilable nonsense. We have, however, a few facts to which we call the reader's attention. It is well known that the fashionable, or good society religion of the region about Boston, is a bastard sort of faith, a kind of mongrel christianity, called Unitarianism, but in reality, little short of pure Deism. These Unitarians do not believe in the divine character and attributes of Christ, as taught by the early fathers, and laid down in the authentic canons of the Church. It is also well known that the judges before whom this trial has been held, one, if not both the prosecuting attorneys, and the ex-Governor of Massachusetts, who is said to have ordered this prosecution, belong to this religious sect.

Judge Thacher, in the first trial, said:

"There is nothing in the Constitution or laws of this Commonwealth which permits any one with impunity to publish an obscene and impious libel reflecting on the Supreme Being and the *Christian Religion*. * * * To tolerate the free circulation of such productions would prove that we were not sincere men."

The statute says that "Any person who shall be guilty of exposing the canonical scriptures, or any part of them, to contempt and ridicule, will be guilty of blasphemy"—and it certainly seems to us that if the statute stands, Judge Thacher is right in saying that the law does not allow any one to libel the christian religion, and that to deny its truth is to libel it, and to bring the canonical scriptures, on which authority it rests, into contempt.

Since the publication of Judge Thacher's Charge, we understand a complaint has been made to one or more Boston Grand Juries, against the *Christian Examiner*, the organ of the Unitarian sect, for a publication denying the divinity, and we know not but the existence of the Savior. Judge Wilde now charges the law, that one has "a right to deny the truths of Christianity, and support that denial by reason and argument." But these controversies must be "conducted in a tone of moderation, and with decency." We believe, as we have before intimated, that neither the Constitution nor the statute, has a word to say about decency or moderation. The Constitution gives the unqualified liberty of the press, the statute denounces in an equalified manner, those who bring the scriptures into contempt. We will not say that Judge Wilde has bent the law to meet the case.

in advance; but we do say, that this decision admirably fits the circumstances of the times; and it is most certainly not calculated to add to our confidence in judicial opinions, where party or sectarian feelings may enter into the case.

We have here a word or two more to say about the charge of obscenity. Whether the publication be, or be not, obscene, is not the first question to be considered—that is not an offence named either in the statute or the Constitution. Blasphemy, not obscenity, is the offence for which Mr Kneeland was indicted and should have been tried. The cry of obscenity is raised apparently to cover under the force of public prejudice, this daring attack upon the rights of conscience and the liberty of the press. It is the ambush whence they advance to maintain by the secular arm, dogmas which they fear would fall if exposed to open debate, the power of reason and the force of argument.

Obscene, or not, the obnoxious expression is in the writings of Voltaire, a work in most of our public libraries, and in those of private gentlemen of the chastest literary and moral tastes. Nor is the expression used necessarily obscene. It is obscene only in the depraved feeling which connects with it an impure idea. "*Shame to him who evil thinks,*" is a maxim that applies to this as well as to many other cases. Voltaire, the original author of the obnoxious article, the wit, satirist, and literary philosopher of the past age, ridicules the idea of the miraculous conception, by suggesting the improbability of any child being born of a woman, without the intervention of the male genital organs. One might with equal propriety attach impure thoughts to the words *begotten and born*, as to that of which they complain. This mawkish delicacy is not unlike that which induces some to speak of a lady's foot or ankle, when they mean her knee or her leg.

We have now to refer to some of the remarks of Mr. Austin, the Attorney General, and the prosecuting officer at the third trial.

"As a proof that the defendant denied an intelligent God, he, (Mr. A.) referred particularly to the expression the defendant used when he spoke of 'a Being to whom all thoughts were known, *if there be any such Being.*' * * * The doubt amounts to a denial. He denies THE GOD OF THE STATUTE! The God intended by the statute to be worshipped by all our POPULACE, [and not by patricians?] is a God of moral attributes. This was the Christian's God, and the God of the statute, and this the defendant boldly and blasphemously denies."

The Attorney General proceeds to examine the constitutionality of the law punishing blasphemy, and the power of the jury to decide this point:—

"If the jury should decide the law was unconstitutional, their decision could not be reversed. * * * Would they declare the law unconstitutional? He put it to the jury as modest men, whether they would set up their judgments against that of the Court and the Legislature. It was a delicate matter for them to assume such a high handed act, though they had the legal power to do it. There were six hundred members of the Legislature, and sixty of them from this town, who had declared the law constitutional, and would a jury of twelve men, unlearned in the law, [the sixty from Boston in the Le-

gislature, are all vastly learned lawyers,] assume to set their opinions against the opinions of this body of men?"

This statement, so far as it asserts that the present Legislature, or any Legislature since that of 1782, which passed the act, has made any decision respecting its constitutionality, is *utterly untrue*. The public of the present day are not the men of 1782. They are a new generation, with more intelligence and different feelings, and they may differ in opinion with their fathers without impeaching their fathers' motives. A jury called upon to decide this question now, are bound by their oaths to decide it according to their own opinion of the law and the Constitution, without regarding what may have been the views of the Legislature of 1782, or the views of the Court at this time.

Having now gone through with all the trials, and presented as we have intended fairly, the most material points made by the prosecuting officers, and the Court, we shall proceed to present our own views upon the case.

Before examining the Constitution as to its hearings upon this case, we have a few words to say concerning the common law, which, like a trap, has been attempted to be sprung upon the defendant; the offence, as contended, on the part of the prosecution, being indictable both at common law and on the statute; so that if the latter did not reach the case, some old law or usage, in the times of Odin, Canute, or Alfred, would answer the same purpose.

To show under what laws, it is contended that the people of Massachusetts live, when it is asserted that the common law is in full force, we quote the following description of the common law from Mr. Parker's plea, pp. 67:—

"Lord Hale says there is no complete series of acts of Parliament, or of judicial decisions, so that *use and custom, judicial decisions, and resolutions and acts of Parliament, though not now extant*, might introduce some new laws and alter some old, which we now take to be the *very common law* itself, though the time and precise periods of such alterations are not explicitly or clearly known."

It is under a code thus described and gravely introduced into the trial, an unwritten code of remote antiquity that an attempt was made to convict Mr. Kneeland.

Mr. Parker quotes or cites Lord Chief Justice Hale on the common law, as follows:—

"That to reproach the christian religion is to speak in subversion of the law." Lord Raymond declared 'that christianity in general is part of the common law.' Lord Chancellor said, '*prior to the statute, blasphemy was an offence at common law.*'"

• Mr Parker contends further that "*religion is part of the common law—whatever is against religion is against the common law.*" *
* * Blasphemy is punishable by common law. * * * *Christianity*, as well as the law of nature, have ever been considered as *parts of the common law.*

Mr. Jefferson, than whom there is none more competent to give a correct account, thus describes the manner in which the Holy Scriptures, religion and christianity, came to be considered parts of the common law, in his letter to Major Cartwright, dated June 5, 1824. See his *Works*, vol. 4. p. 397.

"I was glad to find in your book a formal contradiction, at length of the *judiciary usurpation* of legislative powers; for such the Judges have usurped in their repeated decisions that christianity is a part of the common law. The proof of the contrary which you have adduced, is incontrovertible: to wit, that the common law existed while the Anglo Saxons were yet *Pagans*, at a time when they had never heard the name of Christ pronounced, or knew that such a character ever existed. But it may amuse you to show when, and by what means, they stole this law upon us. In a case of *quare impedit*, in the year book 34 H. folio 38 (anno 1459) a question was made how far ecclesiastical law was to be respected in a common law Court. And Prisot, Chief Justice, gives his opinion in these words:—'a tiel qu'ils de sient eglise ont en ancien Scripture, convient a nous a donner credence; car ceo common ley sur quels tous maniers leis sont fondes. Et aury sir, nous sumas obliges de conastre loir ley de Saint Eglise; et semblablement ils sont obliges de conastre nostre ley. Et, sir, si poit apperer a nous que l'evesque ad fait come un ordinary, fera en tiel cas, adong nous devons ces adjudger bon on autement nemy,' &c. See *Fitch. abr. Qu. imp.* 89. *Bro. Abr. Qu. imp.* 12. Finch in his first book c 3, is the first afterwards who quotes this case and mistakes it thus:—'To such laws of the Church as have warrant in *Holy Scripture*, our law giveth credence,' and cites Prisot; mistranslating *ancien Scripture* into *Holy Scripture*. Whereas Prisot palpably says, 'to such laws as these of holy church have in ancient writing, it is proper for us to give credence'—to wit, to their ancient written laws. This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this false translation into a maxim of common law, copying the words of Finch, but citing Prisot.—*Wing. Max.* 3; and Sheppard, title Religion, in 1675, copies the same mistranslation quoting the Y. Book, Finch and Wingate. Hale expresses it in these words, 'Christianity is parcel of the laws of England.' *Ventr.* 293—3 Kob. 607. But he quotes no authority. By this echoing and re-echoing from one to another, it had become so established in 1728, that in the case of the King *vs.* Woolston, 2 *Stra.* 834, the Court would not suffer it to be debated whether to write against Christianity was punishable in a temporal Court at common law. pp. 409. Wood therefore ventures still to vary the phrase and say, that all blasphemy and profaneness are offences by the common law, and cites 2 *Stra.* Then Blackstone, in 1763, vol. IV, pp. 59, repeats the words of Hale, that Christianity is part of the laws of England, citing Ventriss and Strange. And finally Lord Mansfield, with a little qualification, in *Evan's case* in 1767, says, that the essential principles of revealed religion are parts of the common law, thus engulfing Bible, Testament, and all, into the common law, without citing any authority. And thus we find this chain of authorities hanging, link by link, one upon another, all ultimately upon one and the same work, and that a mistranslation of the words *ancien scripture*, used by Prisot. Finch quotes Prisot—Wingate does the same—Sheppard quotes Prisot, Finch and Wingate—Hale cites nobody—the Court in Woolston's case cites Hale—Wood cites Woolston's case—Blackstone quotes Woolston's case and Hale, and Lord Mansfield, like Hale, ventures it on his own authority. Here I

might defy the best read lawyer to produce another scrip of authority for this judicial forgery, and I might go on further to show how some of the Anglo Saxon Priests interpolated into the texts of Alfred's laws, the 20th, 21st, 22d, and 23d chapters of Exodus, and the 15th of the Acts of the Apostles, from the 23d to 29th verses. But this would lead my pen and your patience too far. What a conspiracy this between Church and State."

The origin of this decision is not more extraordinary and absurd than its principles. Let us examine for a moment the absolute confusion of thought, and total want of clear conception—the arrant nonsense of the common law principles, as laid down from authority, in this prosecution. "Christianity in general is part of the common law." "To reproach the christian religion is to speak in subversion of the law," and punishable as blasphemy. Now, admitting, that Christianity be really a part of the common law or statute law—its merits may be denied, its utility questioned, its provisions ridiculed, and its whole body and tendency denounced, without violating any law. We surely have a right to say of the statute against blasphemy, if such be our opinion, that its provisions are an infamous invasion upon the Constitutional rights of citizens. We have a right to say, if such be our opinion, that whole provision upon the subject of religion contained in the Constitution of Massachusetts, is a daring infringement upon the natural rights of man, evincing the slow progress which the light of reason has made in dispelling the darkness of superstition, and the pestiferous influence of bigotry; and these declarations, these denunciations could constitute no legal offence. If we do not infringe the requirements of the law, the law can take no hold of us. And these remarks apply as well to the law christianity as to any other law. If, therefore, christianity be really part and parcel of the law, we have a right to denounce its principles, scan its provisions, and by argument, ridicule, sarcasm and invective, to denounce it root and branch, as an imposition, got up for private profit and personal power, the same as we have to take this course in relation to any other law. But, while we thus denounce the principles and objects of the law, we must conform to its provisions—we must obey the requirements of Christianity. If the law Christianity say, swear not at all, it would be unlawful to swear in any case—If the law Christianity say, I come to abolish the Sabbath, then it would be unlawful to keep the Sabbath—If the law Christianity say, you must forgive your enemies, speak well of them that despitefully use you, and do not persecute for opinion's sake, then it would be unlawful to do the contrary. But Christianity is no part nor parcel of the law—it may have been the subject of legislation—laws may have been passed making it penal to revile it, but that makes it no part and parcel of the law. If lawyers, whether on or off the Bench, had reflected a little more, and looked to precedent a little less, they would not have repeated nonsense, because it came from the mouth of a wise man. Banks have been the subjects of Legislation, but it would seem very odd to say that the Banks of Wall Street or State Street were part and parcel of the law, and that to speak against Banks was to violate the law—that to attack the principles of banking was to break the Bank law.

Christianity itself, then, cannot be part and parcel of the law. To speak against it may have been, and perhaps may be now, a crime at common law in England, though in one of the cases cited in these trials is that the Lord Chancellor says "that *prior to the statute*, blasphemy was punishable at common law." Is not the deduction inevitable, that the statute took the offence from the common law? And is not that precisely the case in Massachusetts? The Constitution of that State says, "all the laws which have heretofore been adopted, used and approved, in the Province, Colony or State of Massachusetts Bay, and usually practised on in the Courts of Law, shall still remain in force, until altered or repealed by the Legislature." The Legislature having passed the act of 1782, defining blasphemy and prescribing its punishment, must be, and ought to be, considered as repealing all previous laws upon the subject, and especially the common law. If, therefore, the Constitution of Massachusetts, in the second article of the bill of rights, did not take this crime from the common law jurisdiction, the statute law has done it.

But we shall proceed to show that the Constitution of Massachusetts has utterly and absolutely cut off every authority for questioning any man, or hurting any man, for his religious professions or sentiments, so long as he demeans himself peaceably. And a constructive breaking of the peace, on which public libels are prosecuted, is a legal fiction, to sanction judicial legislation and judicial usurpation.

The Constitution of that Commonwealth in the second article of the declaration of rights, says:—

"No subject shall be hurt, molested or restrained, in his person, liberty, or estate, for worshipping God in a manner and season most agreeable to the dictates of his own conscience; or for his religious professions or sentiments:—provided he doth not disturb the public peace, or obstruct others in their religious worship."

Here is an absolute freedom of opinion secured on matters concerning religion. The restricted meaning attempted to be put on this clause by Judge Wilde, that Atheism is irreligious, and therefore not protected by this clause of the Constitution, is, in our opinion, a quibble utterly beneath the character of the most drivelling pettifogger at the bar. No, the clause meant, what it purports to mean, that no man should be hurt for whatever he might say upon the subject of religion, provided it was done peaceably. If irreligion were out of the pale of the Constitution, and the Legislature or the Judiciary had the power to say what was religion, and what irreligion, the minority, instead of having the right of free religious discussion, the right of conscience secured to them by the fundamental and constitutional laws, would be always at the mercy and caprice of the dominant sect in those tribunals. But such was not the meaning of those who framed that form of Government, and they have fortified their meaning, as here laid down, in the sixteenth article of the same declaration, in which they secure the liberty of the press, as follows:

"The liberty of the press is essential to the security of freedom in a State; it ought not, therefore, to be restrained in this State."

These two clauses were designed to cut off, and do cut off, all right to exercise that infamous kind of persecution, indictments for *blasphemy and indecency*, for speech or writing. They knew that under

pretence of punishing these kinds of crime against the public, the power had been exercised for the most frightful persecutions against individuals. They intended to cut up this power, root and branch, and not leave a vestige of it in the soil of Massachusetts. They were willing to take the evil, if there were any, of this entire liberty of speech and of the press, for the sake of the good; believing, no doubt, in the liberal doctrines so beautifully expressed by that great father and apostle of freedom, THOMAS JEFFERSON, "That error of opinion may be safely tolerated, where reason is left free to combat it." And that "what matters it to me if my neighbor believe in no God, or in twenty Gods; it neither picks my pocket nor breaks my leg."

The framers of the Constitution relied on other means than a gag-law for supporting religion and morality. They were evidently a religious people, protestant christians, and desirous of maintaining and advancing that faith, and of promoting morality. They point out very clearly in the Constitution how that shall be done, while they guard the rights of conscience and of the press.

They say that the happiness of the people, and the preservation of civil government, depend on religion and morality; and to diffuse these through the community, they require that the public worship of God, and public instruction in piety and morality, be maintained. The Legislature was required to enjoin upon every town and parish, and to require of them to support public *protestant* teachers of piety, religion and morality, where it was not voluntarily done. The Legislature was also required to compel the attendance of every body on this instruction, where the individual could conveniently and conscientiously attend. Here then they compelled all to pay, and all to attend public worship, where they could attend without hurting their consciences. They tolerate all religions—they tolerate an absolute freedom of religious profession—they will not disturb a man's conscience, but they will make him pay for the support of *protestant* teachers, as paying involves a right of property, rather than a right of conscience. They did not, however, stop here. They secured the legislative and executive branches of the Government to christians, making a belief in that religion a necessary qualification for office, in either of those branches; and as these two organized and appointed the Judiciary, all the departments of the Government were, in effect, secured to christians. Here they stopped—they had erected sufficient dikes and barriers to protect their religion, and had secured adequate means to spread it. Having done this, they felt no apprehension for the utmost freedom of discussion upon all subjects. This liberal policy has grown and extended with the progress of time, and under the fostering care of a new generation. When the Constitution was amended in 1820, the test oath was abolished, and offices were thrown open to the free competition of all, whether Christian, Jew, Mahometan, Pagan or Atheist. Still more recently, the people with great unanimity, have abolished the compulsory support of religious worship. The Judiciary alone, of all the functionaries, appear insensible to this advance of a liberal age, and hang with tenacious grasp upon the obsolete code of a dark and bigoted era.

Some, no doubt, will be startled at the idea, that the Constitution gives no power to suppress what are termed immoral and obscene

publications. No such power, however, we are persuaded, does exist; and the question when a trial is had, is not what power ought, or ought not to exist, but what power does, and what does not exist. The Judiciary, however much they may desire it, cannot lawfully supply a defect or omission in the Constitution. We, however, have no fears of extensive or permanent evils arising from licentious publications. Most people are extremely fearful that the morals of their neighbors may be harmed by reading a bad book, or reviewing an obscene picture, but we rarely find any who have fear for themselves in this particular. And it is often the case, that those who are most clamorous for shutting the eyes and ears and mouths of their neighbors to these productions, have read and seen the most themselves. The broken down debauchee is often the most fastidious moralist. Natural morality, which is just as much a part of man as the natural principle of religion, is a sufficient safeguard against dangers from this source. The framers of the Constitution, as we have endeavored to show, in the before quoted clauses, intended to stop all these causes of persecution, which have disgraced previous generations, and which now disgrace many portions of the human race.

But the Attorney for the prosecution contends that the common law was retained by the Constitution, and that blasphemy is an offence under it; and to sustain this position, quotes a *portion* of the sixth section of the sixth chapter of the Constitution, as follows:

"All the laws which have heretofore been adopted, used and approved in the Province, Colony, or State of Massachusetts Bay, and usually practised on in the Courts of Law, shall still remain and be in full force, until altered or repealed by the Legislature," &c.

And here the Attorney stops his quotation; but the Constitution continues:

—"SUCH PARTS ONLY EXCEPTED AS ARE REPUGNANT TO THE RIGHTS AND LIBERTIES CONTAINED IN THIS CONSTITUTION."

[See Parker's Plea, pp. 8.

This last clause puts the finishing blow to all the common law, and statute law, and ecclesiastical law, as to freedom of discussion upon all subjects, and upon all those absurd and ridiculous colony laws about Catholics and other sects. Any comment upon the unfairness on the part of the prosecuting officer, who should be solicitous only for justice, in thus making a garbled quotation, which was calculated to mislead the judgment, and we believe did mislead the jury, could not add to its enormity.

Having, as we trust, shown conclusively that the Constitution lends no authority to any prosecutions of this kind, we shall now proceed to the second division of our subject, the manner in which this trial has been conducted.

In prosecuting this inquiry, one of the first objections that strikes us with force, is, the manner in which the courts have made and promulgated, nay, published, their charges—to the utter disregard of the rights, as we think, of the defendant. Mr. Kneeland was arraigned *for a specific offence*, that of blasphemy. It was the duty of the *Bench*, in this, as in all other trials, to confine its remarks to the law and the testimony, and to rely upon those, and those only, for the result. It had no right to cast off the crime of the Judge, and as-

sume the robe of the prosecuting Attorney. It had no right, by coarse invective, and opprobrious epithets, to seek a conviction of the defendant, by awakening the prejudices and alarming the fears of the public and the jury. It had no moral right, where an appeal lay from one Court to another, to publish a charge calculated to forestall public opinion and inflame the popular prejudice against the defendant, on his subsequent trial. It had no right to attempt to influence the jury by Jesuitical interpretations of the law, by arrogant assumptions of superiority, or by gross and insolent brow-beating. The jury were the judges of the law and the evidence, and any and every attempt to control or influence their decision, on the part of the Bench, was a gross violation of the rights of the defendant, an open insult to the jury themselves, and a usurpation of the legal rights of that co-ordinate branch of the Court. How far any of the Judges have pursued this course in these trials, we will now proceed to show by their charges.

Judge Thacher published his charge soon after Mr. Kneeland's trial before him, after Mr. Kneeland had entered his appeal to a higher, if not a better, Court, and that appeal yet to be tried.

Judge Thacher in his published charge, says:

"To deny the being of a God, is to take away the very foundation both of natural and revealed religion."

This is not true. However much God may be denied, it neither can destroy him, nor that which is really built on him.

But aside from the seeming incongruity of the expression, what has it to do with the case? The trial was for blasphemy. It was sufficient to say that to deny the being of a God, was to commit the crime of blasphemy. To go further, and to portray the consequences of the crime, was to throw off the character of the Judge, and assume that of the Attorney. But yet Judge Thacher goes further—he actually descends to personal abuse. He says:

"Such denial indicates, I think, great *perversity* of mind; for the belief of a God is derived from the nature of man, which *cannot be disputed*, and from the internal consciousness of man, of which there is *still less* ground for dispute."

If we rightly understand this English, the Judge here charges the defendant with lying. As a belief in God is implanted in the nature of man, that is, of every man, the belief cannot be disputed without great perversity of mind—that is to say, knowing from nature a fact, he wilfully denies its existence. This is surely a peculiar attitude for a Judge. The defendant is charged with blasphemy, and the Judge virtually says to the Jury, Gentlemen, the defendant wilfully lies—a belief in a God cannot be disputed. This latter part of the Judge's *argument*, is not altogether dissimilar to that which Dean Swift puts into the mouth of Peter, to prove the doctrine of transubstantiation, or that the consecrated wine and bread are the blood and body of the Savior. "I say brother Peter, this *loaf of bread* is as excellent a *shoulder of mutton* as ever was sold in Leaden Hall Market, for this very plain and simple *reason*, that by God it is so, and the devil eternally broil him who dares say otherwise."

The Judge also has something like an Irishism in this part of his charge; a harmless matter most assuredly, except inasmuch as

shows his want of clear perception, a most essential quality for a Judge. A belief of a God is derived from the nature of man which *cannot* be disputed, that is, there are *no grounds* for dispute: but he adds—this belief is also derived “from the internal consciousness of man, of which there is *still less ground for dispute*”—that is, *less than none at all*.

“In general,” says the Judge, “it is undoubtedly true that he who allows himself in obscene and impious language, *must* have a *depraved heart*.” Is not this again usurping the province of the Attorney—a relying, not upon the law, but upon the prejudice of the jury, for a conviction? Mr. Kneeland was not indicted for having a depraved heart, but for denying God; and if it had been proved that he had a depraved heart, that he had even committed murder, he could not for that be convicted of blasphemy. But it ought to be borne in mind, to exhibit the fairness of the Judge in more bold relief, that the indecent article, so called, and to which the Judge refers to prove Mr. Kneeland’s depraved heart, was originally written by Voltaire, published in Mr. Kneeland’s paper *during his absence from the city, and without his knowledge*.

Judge Thacher further says:

“But we are to execute the laws as they are, according to their letter and spirit. The law regards the great multitude of religious sects, as standing on equal ground, and as having equal rights; and that no one has a claim to pre-eminence over the others. No person may treat them with contumely and reproach—none may insult their religious feelings with indecent language.”

Mr. Kneeland has insulted no religious sect; at least, he was not on trial for this offence. But the peculiarity of this part of the charge is, in so phrasing it, that the word “sect” is used instead of the *opinions* of the sect. Every man has a right, guaranteed to him by the Constitution, to ridicule and reproach the religious opinions of any sect, as much as he has to do the like to the opinions of any political party. As to the *manner* of doing this, that is a matter of taste, exclusively under the control of the writer, and over which neither the law nor the Court can rightfully exercise jurisdiction. But the Judge has so framed his sentence as to leave the impression upon the mind that this right did not exist. The Judge further says:

“This declaration of a man, [Mr. Kneeland,] who was once a minister of the gospel, has been published by him, and is now circulating in a newspaper, for his profit, among thousands of the *poor and laboring classes* of this community.”

Well, granted—and what has this to do with the case? Is the crime of blasphemy any more a crime by law, when committed by one once a minister of the gospel, than by one who never was a minister? Is it more a crime by law to sell a blasphemous publication for profit, than to circulate it for pleasure? Is it more a crime by law to circulate it among the poor, than among the rich—among the working, than among the lazy classes? If these questions be answered *in the negative*, as they must be, then what effect could the introduction of this matter into the charge have, but a tendency to excite an *illegal prejudice* against the defendant?—and is this christian conduct, *is it even-handed justice*? There is yet another view of this subject

—they could not circulate among the poor and laboring classes, to the *profit* of the defendant, unless those classes bought the publications, and they would not buy them, unless they wanted them. We hear no complaints from the “*poor and laboring classes*” on this account. No, the complaint is from the rich and idle, not that they will hurt them, (for they read the like publications in the Athenæum, and other public libraries, at their entire leisure,)—but merely for the benefit, disinterested creatures, of “the poor and laboring classes.” The rich and lazy classes would thus kindly put upon the “poor and laboring classes” the GAG-LAW.

The judge again says:

“But if you believe that he, well knowing the force of words, and intending to propagate the gloomy doctrines of Atheism, has, by this publication, blasphemed the holy name of God, and denied him—that he has reproached Jesus Christ, by representing his history as false, and his miracles as the tricks of an impostor—and that he has thus contumeliously reproached the holy scriptures—thus endeavoring in his *malignity* to disseminate his impious sentiments among the poor and ignorant—[what a fatherly kindness for the poor—every poor man is not ignorant] and to deprive them of the faith and hopes of religion, the *sole* consolation for the miserable, both in life and in death, you must find him guilty.”

The jury were exclusively judges of the law and the facts; what right, then, had the Court to tell them what they *must*, or *must not*, do in the case. Such an opinion was not only uncalled for, but was an unwarrantable exercise of authority prejudicial to the rights of the defendant, and insulting to the character of the jury.

We shall now leave Judge Thacher, not because we have exhausted the subject, but because we have exhausted our own patience, and perhaps that of the reader.

Judge Putnam, who presided in the Court at the second trial, though not personal and offensive against the defendant, was, we think, as unsound in his law as Judge Thacher, and quite incorrect in many of his statements. He says:

“By enforcing these sanctions and requiring the external *observance* of reverence to a Supreme Being, the law does not infringe the rights of conscience, but protects them. It is not with a view to restrict religious freedom, or the right of any man to worship or not to worship, as he pleases, but to protect the rights of conscience in those who do believe in and reverence the Supreme Being.

“It *must be* obvious to *every* reflecting mind, that a belief in God, who is our creator, preserver, and constant benefactor, who is omnipotent, just, omnipresent, to whom the night is as clear as the day, who knows all things, the thoughts of the heart before they are uttered, and whose existence is without an end—that there is a future state in which we shall exist—that God will reward virtue and punish vice, as we are taught in the Old and New Testaments, *It is obvious*, I repeat, that such a belief *must* have an *all-powerful* and pervading influence upon the hearts and conduct of men; that it must make them *good in all* the relations of life—good and just to each other, and faithful to the government.”

If we admit all this matter to be true, what has it to do with?

plain meaning of the words written in the law and the Constitution?—what to do with the testimony? The jury were bound by the law, to decide the law and the fact. Why does the Judge utter all this matter?—it surely would better beseem the office of the Attorney. But we cannot let the Judge off with this language as the language of truth. Believers have no claim to that protection of conscience which debars an unbeliever the expression of his free opinions. We scout, entirely, that arrogant assumption that believers have higher rights, better characters or purer morals than other men. We have as much right to ridicule the mummery of the church, as the mummery of its ancient handmaid, freemasonry. And the bread and the wine, the consecrated wafer, the smoking chalice, the burning taper, the holy water, the dipping, sprinkling, and groaning, the long face, the up-rolled eye, the black coat, the white vestment, the cowl, the gown, the surplice or the mitre, to be found in the various forms of public worship, are just as fair subjects of discussion, laughter, ridicule, derision, and sarcasm, as the stars and jewels, the aprons, signs, grips and tokens of freemasonry, or the follies of any other subject. The world has arrived at that point that the self-styled pious, aye, the really pious, must get down from their stilts—the *benefit of clergy** must be abolished in matters of this kind—they must exercise a little of the humility they preach—they must be content to walk on a level with the rest of the world—worship as they please, write as they please, speak as they please, but disturb none, molest none, persecute none. The world has learned that religion and virtue are not necessarily, though often, united. Experience has taught them that men may be very good, honest, benevolent, ornaments to society and human nature, and yet be without religion. It has taught them that a man may be very religious, and at the same time a very great rascal—and hence the multitude have insensibly associated the terms Deacon, and Knave, as nearly synonymous; not that we would by any means intimate that all Deacons are rogues—we know the contrary. But we appeal to the prosecutors themselves in this case, the attorneys and Judges, all religious, truly pious men, for the proof of our position. If the world suppose them to be purer than their neighbors of less religious pretensions, let the conduct of their lives be examined. *Let them all turn their eyes within—we speak with meaning*—and then let him that is without sin, cast the first stone—let him that is without sin, say that religion has made *him pure*. No, religion and virtue may exist together, and they may exist separate—they are two different and distinct parts of the human constitution, and when this important fact becomes more generally understood, man will be appreciated for what he does, not for what he believes—for his works, not his faith.

We deem it needless to enlarge upon the objectionable manner and

* "*Benefit of Clergy*" in law, is a privilege formerly allowed, by virtue of which, a man convicted of felony or homicide, was put to read; and if the Ordinary or Clerk of Newgate said *legit ut clericus*—that is, he reads like a clerk or clergyman,—he was not punished by death for his crime, like other men, but was set free. This clerical privilege was not until recently entirely expunged from the English law; and indeed we are not sure that it is entirely done with now.

matter of Judge Putnam's charge. Enough has been said, we think, to show that his course was improper, both as to the rights of the jury and of the defendant.

We shall take up the part of Judge Wilde's charge, which relates to the rights and duties of jurors. It has never fallen to our lot to read a more extraordinary charge. To render its inconsistencies and absurdities more obvious, we italicise some portion of it. This charge, it seems, was revised by Judge Wilde, before it was published. We quote as follows:

"An important issue between the Commonwealth and the Defendant, involving questions and considerations highly interesting to the community, is now submitted to your determination; and before you retire to deliberate, it becomes the duty of the Court to *instruct* you as to the questions of *law* which have been discussed on the trial, and on which your verdict must materially depend. For although it is true that *you have a right to decide the law* as well as the fact, *in this and every criminal case*, where the trial is on the general issue—and *are indeed bound to do so* by the forms of the issue—yet in cases of doubt and difficulty you will look to the Court for *instructions* as to the law, throwing upon that tribunal the *responsibility of deciding* it correctly. * * * Its peculiar duty being to decide *all* questions of law. * * * It is *only*, therefore, when an issue of fact involves a question of law, that the jury have a right to decide upon the law; and *as to the law*, they are bound to *receive the instructions of the Court, and to be guided by them*, unless they know that the instructions given are erroneous. For if the jury have doubts as to the law, but no certain knowledge, their duty, *I think*, is to follow the directions of the Court; and in such cases of doubts as to the law, they would have the *power*, but *not the right* to decide against the instructions of the Court."

We wish the reader to note carefully, the backing and filling—the asserting and retracting—the advance and the retreat, in this very curious judicial document. A little retrospect of the history of this case, may cast some light upon the causes as well as character of this charge. Mr. Kneeland's case was the first under the blasphemy act, where the constitutional principles of the law had been called in question, and combatted with ability. The learned counsel for Mr. Kneeland on the former trials, had come forth in defence of his client's rights, in a speech of unrivalled force and eloquence, one that shook to its very basis, the whole superstructure of persecution and intolerance—one that so impressed the minds of the public and the jury that an acquittal would have been inevitable, if the jury had not been *bamboozled* out of the exercise of their legal right, a right to judge of the law. The County Attorney, in a most abusive speech on a former trial, denouncing the defendant as "an enemy of the human race," had asserted that "the law commits to juries no such power" as to decide the constitutionality of the law: and this assertion, though the Judge, we should think, ought to have known it to be incorrect, was not contradicted in his charge to the Jury. We have the very best reason for believing that it was this false impression which the Judge left, if not covertly enforced, upon the minds of the jury, that procured the first conviction of the defendant. But

this false view of the law, no verdict would have been rendered. In the mean time the Judge published his charge, while the appeal was pending, the Attorney his, and the press, the religious press, was at work to inflame people against Mr. Kneeland. The second trial came on, when renewed efforts were made, on the part of the County Attorney, to influence the jury as to their right to judge of the law and the Constitution. Judge Putnam, who presided at the second trial, as we have before shown, lent the whole force of his official influence, to produce a conviction. But fortunately for the defendant, fortunately for civil and religious liberty, and the rights of man, the pannel contained one jurymen who had knowledge to perceive the plain principles of the law, and the rare moral courage to breast himself against religious persecution and usurpation, and enforce those principles. No verdict was obtained. The press, the religious press, again opened its batteries, pouring abuse upon the obnoxious juror, whom they denounced by name, assailing his character and impugning his motives. It was under these circumstances, and with these feelings, that the third trial, at which Judge Wilde presided, came on. It was a matter of great importance to the church and state party, to procure a conviction.

This brief statement may, perhaps, in some measure, account for the peculiarity of the Judge's charge. We will place his admissions and assertions in juxtaposition, stripped of their verbiage. First he says:

"It becomes the duty of the Court to *instruct* you as to those questions of law." * * * "It is true, you have a right to decide the law as well as the fact, in this and in every other criminal case. You will look to the Court for instructions as to the law, throwing upon *that tribunal* the responsibility of deciding it correctly. Its peculiar duty being to decide *all* questions of law."

Just above he said, the jury

"Have the right to decide the law in this and *every* other criminal case"—now it is the peculiar duty of the Court to do it. Again—"It is *only* therefore when an issue of fact, [was that not the case on trial?] involves a question of law, that the jury have any right to decide upon the law; and as to the law, they are bound to receive and be guided by the instructions of the Court. In cases of doubt, the jury would have the *power* but not the *right* to decide against the instructions of the Court."

It would be very difficult to determine which most predominates in this charge, arrogance or nonsense. The jury either have, or have not, the right to decide. If they have the right, it is a legal right, of which they cannot divest themselves, if they either regard their oaths or the rights of the prisoner. The *law* vests this power in the jury, if they have the power at all. It is alike insolent and illegal, if the power be thus vested, for the bench to say:—"You, gentlemen of the jury, cannot be supposed to know any thing about the law, therefore decide as we decide, follow our instructions, cast the responsibility which the *saw puts upon you*, upon the Court." It may, or it may not, be true, *that the Court knows the law better than the jury*; but when the *law lays that the jury know best*, and under all the considerations of the *case, we vest in them the right, the legal right of deciding it, silence*

on that point would seem best to become the Judge. It is a gratuitous kindness in the Bench, to attempt to preserve the trial by jury, by usurping the right and performing the duties of the jury. If the law do not vest this right in jurors, and we surely are left in the dark, by the Judge's charge, whether it do or do not, then the Judge should have said so distinctly; he should have said, "Gentlemen, just look at this newspaper—read this article—and answer whether you believe or not the defendant to be or be not its editor—the Court will settle all the rest." This would have been frank, if not legal. The mode the Judge pursued was decidedly less ingenuous, but we think not a whit more legal.

To give some idea of the value of the opinions of the Bench, we shall quote the opinions of Judges Thacher, Putnam, and Wilde, in the different trials of this case, where there was no dispute about the facts, where both the facts and the law were the same, in all the cases.

Judge Thacher says:

"The publication is styled a blasphemous libel, * * * because it contumeliously reproaches Jesus Christ, the Holy Ghost, and the Holy Word of God. There is nothing in the Constitution or laws of the Commonwealth, which permits any one with impunity to publish an obscene and impious libel, reflecting on the Supreme Being or the christian religion. * * * But if you believe he, well knowing the force of words, and intending to propagate the gloomy doctrines of Atheism, has by this publication blasphemed the Holy name of God and denied him, that he has reproached *Jesus Christ* by representing his story as a fable, and his miracles as the tricks of an impostor, &c. * * * You will find him guilty."

Judge Putnam says:

"I admit that the Atheist [who denies God] as well as any other man, has a right to hold and promulgate his opinions, and to make others believe them if he can do so."

Judge Wilde says:

"You will therefore judge whether the defendant does not deny God, his creation, and final judging of the world, the denial which is prohibited by the statute."

And further the Judge says, that part of the statute which enacts that no one shall deny God, is in conformity to the letter and spirit of the Constitution—that the statute against blasphemy is a valid law. It does not, says the Judge, even prohibit the denial of the *truths* of christianity; but it does prohibit denying the existence of the Deity, his creation, government, and final judging of the world, and the exposing the Holy Scriptures to contempt and ridicule."

However vacillating and inconsistent the conduct of this, or any other jury, may have been, or may be, it would be difficult to find greater dissonance in their decisions, than exists here.

We think we have now gone far enough to indicate pretty truly the manner in which this prosecution has been conducted on the part of the Courts. We had purposed to say something more respecting the manner in which the prosecuting officers, Messrs. Parker and Austin, have borne themselves in their pleas and arguments during these trials, but we shall pass them by—for the public will no doubt reflect, that a very large portion of the professional lives of these

gentlemen, has been spent in the lower, if not the lowest of our criminal courts, where the most degraded and miserable of the human race are tried for the most pitiful of human crimes. It is but justice to these two distinguished gentlemen to say, that their whole course during this prosecution, fully sustains the reputation they have so long borne in public opinion; and we advise those who have a love for chaste language, legal acumen, close argument, and fair dealing, to read their speeches. We are sure that no criticism, however stirring, could add any perfume to their native fragrance.

We shall now proceed to show what the rights and duties of jurors are, by quoting from a recent legal work of undoubted authority, an article upon that subject. The public will then be better able to decide how far the Court has either neglected or overstepped its duty, in the kinds of charges given during these trials. The legal authority we cite, is from one unfriendly to jury trials—a high church and state man in his principles; but he speaks as a lawyer, and a sound lawyer, as to the rights and powers of juries.

“The rights and power of the Jury as to their verdict in criminal prosecutions, &c.

“In criminal cases the trial by jury is intended to afford to the person accused, not only a fair trial, whether innocent or guilty; but it is intended also to furnish, in an especial manner, every reasonable protection against the possibility of being convicted unjustly. Where, therefore, the jury consists of individuals possessing only a moderate share of abilities and knowledge of mankind, and such a share of integrity as is sufficient to resist the temptations, which may possibly be offered, to induce them to pervert justice, if they will pay a proper attention to the proceedings before them, there can be but little probability that innocence will ever suffer the penalty of criminality, or that legal guilt will ever escape with impunity.

“To illustrate the justness of this remark, it will be hardly necessary to do more than allude to the *certainly* which is required in the indictment, in describing the criminal charge, without which, the prisoner cannot be convicted, even if the jury should give a verdict against him. The challenge of the jury with cause; or the peremptory challenge without cause, before mentioned; the inadmissibility of all proof of confessions drawn from the prisoner by promises of favor, or by threats of any kind; the presumption of innocence, with which the law protects the prisoner, and renders it unnecessary for him either to justify, excuse, or in any way to exculpate himself, until a strong presumption of his guilt is raised against him by the testimony of witnesses under oath; and lastly, the humane principle, that even if such strong presumption should be raised in the first instance, if the prisoner can, either by other testimony, or by inferences drawn from circumstances satisfactorily proved, or by comparison of facts or conclusions, raise a *reasonable* doubt whether after all he may not be innocent, the jury, according to the legal understanding of their oaths, will be bound to acquit. * * * * *

“But as there are no new trials in criminal cases, if the jury should give a verdict, either against law or evidence, and notwithstanding the instructions of the Judge, before it was recorded, to reconsider

it, should persist in it, the verdict must stand, and *there is no power to call the jury to account for it.*

"Since, therefore, this power is confided to the jury, it may not be amiss to consider what is their right and duty in this class of cases. This subject will be most conveniently illustrated by selecting a particular one. Suppose A. to be indicted for a crime, and pleads not guilty, and after the witnesses for the prosecution are examined, he or his counsel argues to the Court, *at the same time requesting the attention of the Jury*, that the facts testified to do not amount to the crime charged. Suppose the Court charge the law to the jury, contrary to the prisoner's argument; here the jury, if they are satisfied of the truth of the facts, and take the law to be as charged by the Court, will be bound to find the prisoner guilty. If they doubt, or cannot agree with each other, whether the law is correctly charged by the Court; or if they have any mistrust of themselves that they shall not be able to apply the law correctly to the facts, they may find a special verdict, and thus submit the question of the prisoner's guilt to the decision of the Court. But if after hearing the prisoner's argument, and the charge of the Court, the jury should be *clearly of opinion* that the law is in accordance to the argument, and the Judge's charge is wrong, it will be their duty to acquit the prisoner. If, in such case, they should find a special verdict, they would hardly do right, since they must be pretty sure the prisoner will be convicted; and yet, according to their own understandings, he is not guilty.

"If they should ask the Court for further instructions in the case, before they made up their verdict, as they ought to do, because perhaps a few words of explanation from the Judge will remove the difficulty in their minds, and they should still feel convinced that the Judge did not charge the law correctly, but from a deference to his opinion, should find the prisoner guilty, they would violate their oaths.

"If a barbarous or arbitrary law should be enacted, as for instance it should make mere words sufficient to constitute treason," [or curtail the liberty of the press, or of conscience] "and any person should be indicted on such act, it would be the duty of the jury to acquit the prisoner, if, as in the case supposed, the law were unconstitutional, or what is the same thing in effect, if the jury conscientiously believed the law to be unconstitutional, however it might be charged by the Court. * * * Each Juror ought, in all cases, especially in capital ones, to act according to the dictates of his own conscience, and on his own moral responsibility in making up his verdict. * *. The prisoner in a criminal case is entitled to the exercise of his [the juror's] judgment, unbiassed by any consideration, that is not grounded either on the evidence in the case, or the law applicable to it. The jury in no case have a right to decide their verdict by drawing lots * * to do it in a criminal trial would be inexcusable; and in a capital trial would in fact be murderous; because in this way, an individual might be put to death without any real consideration of his guilt or innocence. * * * * *

"No juror ought ever to agree to bring in a verdict of guilty against a person, unless he is completely satisfied of his criminality. *Though the other eleven are agreed, if their reasoning do not convince him, and he should, out of deference to their judgment, though sanctioned at*

with the opinion of the Court, consent to a verdict, the prisoner's blood, if innocent, will rest upon that juror's head, and upon his alone; for the rest conscientiously believe the prisoner guilty, according to the best exercise of their judgment, but he convicts while he doubts the prisoner's guilt, and therefore violates his oath, neglects his duty, and betrays his trust.

"If acts of oppression should be practised upon an individual under pretence of lawful authority, and an action should be brought for the injury, if the oppressor were a man of great political power and influence, it might happen that any one or two individuals, if they had the judicial power of deciding between the parties, without the intervention of a jury, might be too much overawed and intimidated by the wrong doer, to do strict justice between them.

"But an independent jury in any such case, would make the plaintiff's case their own; and keep in mind that, where one citizen is oppressed, all are threatened, would take care to give a verdict against the defendant for such exemplary damages as would teach him, however high may be his rank, that the law is above him.

"If the sovereign political power should fall into bad hands, and an attempt should be made to crush all those who were obnoxious to them, by the enactment of highly penal and unconstitutional laws, against acts wholly free from moral turpitude, and only prohibited because all freedom is dangerous to usurped power, it might be the duty of the jury, by their verdict of acquittal, to rescue the persons accused, and show their detestation of tyranny and oppression."

In the first year of Charles the Second, John Milburn was indicted for high treason, for publishing certain books, reflecting upon the government. On his trial, he made a very bold and eloquent defence, and though the Court unanimously desired his conviction, he was unexpectedly acquitted by the jury. He was, however, banished by the Parliament; he returned after a time, and was indicted for it capitally, and was very unfairly used on his trial; but making an able and eloquent defence, he was again acquitted by the jury. The Parliament seem to have been greatly incensed at this, and passed an order to examine the jurors, and make them give an account of their verdict. They were accordingly examined *separately*, and their answers were such, generally, as became men of integrity. The foreman's answer was in substance that in what he did he discharged his conscience, and that he would give no further answer about the verdict, for reasons best known to himself; four more made a similar answer—one said he was only bound to answer to God for his verdict, &c. &c.

"It was soon found, therefore, that jury trials were not so much under the control of the powers of the government, that favorable results could always be depended on with confidence, even when the influence of the government was seconded, in the strongest manner by that of *arbitrary and prejudiced Judges*.

"The operation of the trial by jury in protecting the citizens from *any species* of public wrong or oppression, may be illustrated by *numberless cases*. Suppose an unconstitutional law be enacted either *by Congress* or by the State, which, however, the Courts, for *what ever reason*, see fit to sustain, if the jury were satisfied that such law

was unconstitutional, they would have *the power and the right, and not only so, but it would be their solemn duty, to acquit any prisoner who might be charged with an offence against such law.*"

We have now gone through with the consideration of the trials of Mr. Kneeland, as it relates to the great principles involved in the question—the manner of conducting the trials, and the rights of a jury to decide the case. We entered upon the investigation of this subject with no sectarian, with no personal feelings. Mr. Kneeland is a stranger to us; we neither know nor care anything about him or his religious opinions—whether they are good, bad or indifferent, is a matter of indifference to us. Whatever they are, we hold that he has a right to entertain and express them, verbally or in print. So long as he does no illegal act, we fear nothing from the expression of his opinions, however widely they may differ, or nearly they may approach, to our own, or to any other man's. We do not fear conversion to error, be it preached by whom it may, when it may, where it may, and how it may; and we have no doubt that other men have a like self-control; but be that as it may, so long as error of opinion is confined to speculation, and does not show itself in acts injurious to the rights of individuals, we care not who is converted to it.

If the Judges in the case under consideration had confined their opinions of the law and the rights of the jury, to mere speculation, and had not, in an official manner made them bear directly upon the rights of the citizen, they would not have required notice. But when a wrong opinion is reduced to the form of an illegal act—when the rights of one man are invaded, and especially if invaded under the forms of law, and by those in high authority, the rights of every man are endangered. If Mr. Kneeland may be punished for his opinions, who may not be punished for his? If the jury can be brow-beaten, and overborne by the arrogance of the Court and the insolence of a prosecuting attorney, in a trial where the Court hopes the popular prejudice may go with them, how long can they ever sustain themselves in any other case, against the authority of the Bench? Who, in this case, can rely with safety upon the trial by jury, hitherto the bulwark against tyranny, if charged with any offence?

We do not believe the public will at all acquiesce in a continuance of this prosecution; the public of this day are not the public of Cotton Mather's, and the Salem witchcraft, time; they are not the public of 1782, that passed the blasphemy law; they are not the public of forty, nor of twenty, years back. They are a new race of young people, ardent, generous, liberal, moral people; and though we would not say that a majority of them are indifferent to the truths of the christian religion, or unbelievers in its dogmas, we do state it as our decided opinion, that a vast majority are disposed to have perfect freedom of thought and of discussion. They care not if the devout send out their missionaries to propagate a mendicant religion by mendicant efforts. So long as these contributions are the voluntary payments of the donors, they will not complain. But when coercion and the power of the law, are called in to support or to spread opinions, then will be seen the rising up of the liberal spirit of the age. This is the prevalent, existing feeling; and it requires but a few cases like Mr. Kneeland's to develope it fully and effectively.

Too much credit cannot be bestowed by every friend of free principles, upon Mr. DUNLAP, the counsel who first laid bare, with the hand of a master and the power of a giant, the enormity of this prosecution.

Mr. GREENE, too, the juror who first resisted the influence of the Court, the frown of power, and the bigot's hostility—who defended his course, and in his clear, concise, and cogent appeal, justified to the public, the high reputation he had long sustained, deserves well of freemen. We have drawn largely upon these productions for thoughts and arguments.

The moral courage necessary to stand up for right in an unpopular cause, is a quality which but few possess. The friends of free principles will yet erect monuments to these two bold citizens, who, with the club of Hercules, have dared to give that monster, religious persecution, his death-blow.

AN APPEAL
TO
COMMON SENSE
AND
THE CONSTITUTION,
IN BEHALF OF
THE UNLIMITED FREEDOM
OF
PUBLIC DISCUSSION:
OCCASIONED BY THE LATE TRIAL OF
REV. ABNER KNEELAND,
FOR BLASPHEMY.

PUBLISHED IN BOSTON.

1834.

A P P E A L .

The entire severance of church and state is the great boast of American liberty. In every other country, they still continue in a disastrous alliance, fatal to all the best interests of mankind. Where the church is the stronger party, the civil power is employed in persecuting heretics and enriching the clergy ; where the civil power predominates, the clergy are converted into mere tools of the government, and constitute a standing army, on which, tyranny relies, as much as on its bayonets, and which, liberty and reform have infinitely more cause to dread.

This community is justly jealous of anything that savors of an intention to revive among us, a system, from which we have gradually, and almost imperceptibly, escaped ; and a late attempt to employ the aid of the civil arm in silencing the free discussion of Religious dogmas, has excited not a little attention.

As all general propositions are better understood, and more clearly apprehended, when applied to some particular case, the prosecution above alluded to, furnishes a fair opportunity for discussing the *policy and legality of any legislative or judicial interference with the freedom of controversy.*

The Rev. Abner Kneeland, it seems, is one of the apostles of a certain sect called by themselves the *Free Inquirers*, and stigmatized in the newspapers as the disciples of Owen and Fanny Wright. The Free Inquirers, in imitation of the numerous other sects and parties, political, religious, and non-descript, into which this community is divided, have established among us a weekly paper, entitled *The Investigator*, for the promulgation, illustration, and defence of their peculiar doctrines. Of this paper, Mr. Kneeland is the editor. The *Investigator*, in imitation of its sister sectarian prints, appears to employ itself rather in attacking other dogmas, than in defending its own. Mr. Kneeland, it seems, denies the divine origin of the Christian Religion : he denies the immortality of the soul : he even denies the being of a God, (*distinct from nature.*) He maintains that man's whole existence and hopes of happiness are limited to this life ; and that the great problem of philosophy is, not to assuage present suffering

by unsubstantial dreams of future bliss, still less, to darken and destroy present pleasure, by dread of future misery, — but to discover the means of reducing *mortal* suffering within its narrowest limit, and carrying *terrestrial* happiness to its greatest perfection.

This creed, however false and ridiculous, is by no means new or modern. It is a resuscitation of the ancient doctrine of Epicurus — a school which numbered disciples, not less illustrious than Virgil, and Horace, Cæsar, Atticus, and Macaenas ; a school whose doctrines have been revived in modern times, and in our own day embraced, to their full extent, by many acute and able men, among whom it will suffice to name Bentham, the celebrated jurist, and La Place, the famous astronomer. These individuals are mentioned, not with the idea, that the impiety of their creed, can be vindicated by the splendor of their genius ; but as an apology for the errors of the Free Inquirers, — who have only been entangled in a net of sophistry, which much stronger intellects have been unable to break ; and as an excuse for Mr. Kneeland, who has only published in a newspaper, in plain English, that same creed of philosophy, which is more eloquently taught, and more skilfully enforced, in those very Roman authors, which pious and orthodox tutors do not hesitate to put into the hands of every school boy, to whom they teach the latin tongue.

The charges, on which Mr. Kneeland was exposed to the disgrace and danger of a criminal prosecution, were the following.

In a certain number of the Investigator, in a paragraph copied, it is said, from Voltaire's Philosophical Dictionary, is an assertion that the French Catholics believe that Jesus Christ was born a eunuch.* This is the *first* specification.

In another paragraph, the Christian doctrine of prayer is held up to ridicule, by an ironical pity for the Deity, subject to the drudgery of hearing and answering so many various and contradictory petitions. He is spoken of as "the poor old gentleman," and compared to General Jackson, in terms quite inconsistent" with that distant and awful dread, with which, as we are taught, the Divine Being ought to be regarded. This is the *second* specification.

In a third paragraph, Mr. Kneeland, contrasting his doctrine with that of the Universalists, declares his disbelief in a God, (distinct from nature) ; in Christ, whom he regards as a mere chimera ; in miracles, or in a future life. This is the *third* specification.

Before proceeding to consider the justice of prosecutions for what is called blasphemy, it will be well to remark, that the *first* paragraph above specified, is described in the indict-

* As the exact words, in enquiries of this sort are often of great importance, it will be proper to state that the phrase used by the Investigator is, "born without testicles."

ment, not only as *blasphemous*, but as *obscene*. There seems to be an attempt, to eke out the crime of blasphemy, by the aggravation of obscenity, and to jumble the two offences together into a compound crime. In this proceeding, there is neither equity nor law. Every offence with which a man is charged ought to be distinctly and *separately* set forth. One cannot, and ought not to be held to answer in the same indictment, to charges of larceny and fornication, — sheep stealing, and murder. If Mr. Kneeland has violated the reasonable provisions of the law, by obscene publications, he will find but few defenders. Let him be tried for that offence ; but let no extraneous charge of blasphemy be tacked to the indictment. God protect us from the enormity of prosecutions *nominally* for one offence, and convictions *really* of another ; from indicting a man for being a horse-thief, and convicting him of atheism !*

The simple question then, which now demands our attention is this. Is it consistent with common sense, or the principles of our republican constitution, to repress the expressions of opinions however false or absurd those opinions may be, or to shackle the liberty of discussion, however that liberty may be perverted to the support of false doctrines ?

Every body now-a-days, is a zealot for religious toleration, and wonders at the blind zeal that ever persecuted, Catholics, Baptists, or Quakers. The clergy assure us that Toleration is of the very essence of christianity, and one of the clearest inculcations of our meek and gentle religion. This interpretation of the Gospels, however obviously just, is extremely modern, and the steps by which it has been arrived at, are very remarkable. When the Emperor Constantine adopted christianity, and made its public profession, not only legal, but the road to wealth and honor, it had yet been embraced by only a small portion of his subjects ; — a large majority still adhered to the religion of their fathers. Constantine was not only a saint but a statesman ; and he resisted, with honourable firmness, the earnest entreaties of the christian clergy to be allowed to employ the axe and the prison, for the extension of the Church — a doctrine, as they assured him, very clearly taught in the Holy Scriptures. His successors, for fifty years, persevered in the same just and honourable policy ; and though during the fury of the Arian controversy, the Church was allowed to

* The charge of obscenity, against the above mentioned paragraph seems not very weighty. If, in an argument against the Catholic doctrine of cellbacy, it had been quoted by a protestant doctor, as a proof of the ridiculous whims to which that false notion, had given rise, whose modesty would have been shocked by its suggestions ? — not his or hers surely, who reads in St. Matthew, (xix, 12,) the text which gave rise to the belief. "There are some eunuchs which were so born from their mother's womb ; and there are some eunuchs which were made eunuchs by men, and there be eunuchs which have made themselves eunuchs, for the kingdom of heaven's sake. He that is able to receive it, let him receive it." This text has been fruitful in error. It was understood by Origen, the first commentator on the Gospels, and the most learned of the early fathers, as inculcating the duty, or at least — the merit of castration : — and what is more remarkable yet, he acted upon this interpretation. Though most undoubtedly a false one, those who read the preceding verses, will perceive that it does not lack some show of plausibility.

employ the secular arm in maintaining her own discipline, and punishing the heresy of her own members, she was forbidden to lay her bloody hands on those who refused her fellowship altogether.

But in the reign of Theodosius, the influence of the clergy had increased ; and their eloquence became more persuasive. Not content with proscribing all the Arians in the Empire, this Emperor enacted laws against the Pagans. The exercise of their religion was prohibited ; priests and bishops, at the head of armed bands proceeded to plunder and destroy the temples ; and their funds, long accumulated from the gifts and contributions of devout worshippers, were confiscated, with a total disregard of the will of the donors, to the use of the state, and the church. This was about three hundred and fifty years after the first preaching of christianity. From that time, downward, even to the commencement of the last century, the Christian clergy, of *all sects*, heretics as well as orthodox, Protestants as well as Catholics, continued to preach, that it was the first and highest duty of the civil ruler to use his power and authority to protect the church against heretics, schismatics, infidels and gainsayers. This doctrine was universally revered as the clearest of christian truths ; and as Christendom, subsequently to the reformation, had become divided into a multitude of sects, each of which, claimed, to be exclusively *The True Church*, the religious world exhibited for two centuries, the edifying spectacle of Catholics, Lutherans, Calvinists, and Episcopalians, each, wherever they predominated persecuting all the rest, and whenever they were in a minority, persecuted by all the rest in return. All these sects however lovingly united in the punishment of Jews, Sorcerers, Infidels, Atheists, Baptists, Socinians and Quakers. It is lucky for the reputation of the three latter sects, that they never possessed the power of retaliation. During this whole period, it was the clergy who were the greatest sticklers for persecution, which was represented as the strongest and best proof of a hearty zeal for God's glory and man's salvation.

The first eminent writers who dared to vindicate the claims of humanity and the dominion of common sense, against this tyrannical bigotry, were the *sceptic* BAYLE, the *socinian* LOCKE, the *philosophic** LEIBNITZ. This revolt excited against its authors all the bitter rage of pious passion, and even the utmost efforts of those illustrious champions might have failed of success, and persecution have been still the order of the day, had not political considerations furnished a fortunate aid to philosophy. Holland and England were the countries in which the doctrine of toleration first came into fashion. In these countries, from a variety of causes, the dissenters from the established faith had become so numerous, that a choice must be

* Leibnitz was bred a Lutheran, — a creed to which he seemed to adhere. But he never went to church ; and on his death bed declined any clerical assistance.

made between toleration and perpetual civil war. Policy and prudence prevailed over piety, and toleration was at length formally proclaimed. At first however it was only occasional as well as partial and narrow. Even to this day, the English Dissenters are marked out by many insolent distinctions, and it was long before Catholics or Socinians, were held to be more entitled to indulgence than Infidels or Atheists. Toleration however, is so consonant to every more noble emotion, and when once fairly considered, accords so well with the plainest dictates of reason, that notwithstanding all opposition, it made a silent but certain progress. Catholics and Protestants, after a separation of near three centuries, were once more persuaded to call each other brethren; the more the subject was considered the more obvious became the folly of persecution; and diligent students of the Scriptures began to *discover*, notwithstanding the blindness of so many centuries — that toleration is one of the plainest precepts of the Gospel!

The Christian Doctors however, still lag behind the march of philosophy. Though all are mighty sticklers for toleration, there are some who still refuse it to those who deny the Christian religion or who disbelieve a God.

The law on this subject has followed, as in other cases, a little tardily, the progress of public opinion. Indictments for *heresy* and *schism* have fallen into oblivion; the statutes against Quakers, Baptists, and Conventicles are repealed. But by the English common law, it is still held, that to dispute the divine origin of Christianity, to deny or impugn its evidences, or to controvert the existence and perfections of God, is punishable as *Blasphemy* by fine and imprisonment.* This too, is undoubtedly the common law of this Commonwealth, unless set aside by those constitutional provisions to which we shall presently allude. Our pious ancestors however, did not leave Religion to rely on the common law alone; and so late as the year 1782, the spirit of the pilgrims was strong enough in the Legislature to procure the re-enactment of a statute, originally made in 1641, by which it is provided, that any person who shall curse or reproach God, or deny his existence, or his creation, government, or final judging of the world, or shall curse or reproach Jesus Christ or the Holy Spirit, or shall reproach or expose to ridicule any of the books of the Christian Scriptures, shall be punished by imprisonment, by whipping, by the pillory, by sitting on the gallows with a rope about the neck, or by binding to good behaviour, at the discretion of the court. The penalty in the original Act was DEATH.

Both the common and the statute law seem to be sufficiently explicit. The only questions raised, are — is such law consistent with reason and common sense; and is it agreeable to the Constitution?

* It is worthy of remark, that this crime of Blasphemy is the very offence of which Christ was accused by the Pharisees and for which he was crucified.

In considering the reason of the law, the subject admits a division. We may perhaps conclude that to protect Christianity by legal enactments and to proscribe and punish Judaism, Mahometanism or Deism, is very much the same thing as to protect Puritanism by law, and to proscribe and punish the *eighty two* heresies, detected by the Cambridge synod. Still it may not follow, that we are bound to allow atheists and Libertines, who ridicule all religion, to invade the sheepfold.

There are several arguments however in favor of a universal freedom of discussion, two of which it will suffice now to mention.

1. All the principles and reasoning on which is founded that doctrine of toleration to which all assent, go for the whole, and will not easily admit of any limitation. We all confess that the Unitarians are to be allowed full liberty ; yet those of us who have been so fortunate, as to be educated in the bosom of a more evangelical church, cannot but regard that misguided sect as stripping christianity of almost its entire value ;— and of being in fact, little better than infidels in disguise. Some of the more zealous among us, even dispute their title to the name of christians ; and all pious people indignantly deny them, the rights of christian fellowship.

Nobody has yet thought of refusing to the Universalists the protection of the law, yet even Socinian thoughtlessness is startled, at the dangerous and licentious doctrine that there is no retribution in another world ; a doctrine which has been universally regarded as destructive of all civil society.

Now if those who corrupt the gospel, “wresting it” as the apostle says, “to their own destruction,” are to be allowed full liberty to disseminate their false and sophistical interpretations ; if under pretence of teaching the gospel, a thousand false prophets are to be permitted to seduce their followers into fatal errors ; if, pretending to purify and exalt christianity, Socinians and Universalists are to be suffered to prepare the way for universal infidelity, and to throw wide open the door to atheism, — is atheism to be prohibited from coming in ? Are the secret promoters and abettors of infidelity to be cherished by that very same law which punishes the infidelity itself ? Let us be consistent in this matter. It certainly is not a greater crime to deny the Bible altogether, than by an artful perversion of it, to turn it from bread into a stone, — from the bread of life, into a stone, over which many stumble to rise no more. The principle which allows you to stop the mouth of an atheist, will justify you in silencing, and compel you to silence, every body, who dissents from the least tittle of your creed. It is impossible to draw any line of demarcation.

2. By restraining the free discussion of the evidences of natural and revealed religion, we deprive ourselves of the best possible test of their truth. The vain attacks of its opponents form a principal argument in favour of the doctrine of gravita-

tion ; and certainly it is a great proof of the truth of any opinion, and especially of opinions grounded on *alleged facts*, that ingenuity has attempted refutation in vain. "One story is good," says the proverb, "till another is told." He who hears but one side of a case, will most likely hear a very one sided argument. This proof of an opinion from its standing against inquiry and objection, is particularly valuable for those, whose leisure or learning will not permit them to examine the evidence for themselves. I read, for instance, that William of Normandy landed in England in the year 1066. Now the evidence of this fact depends on the alleged testimony of three or four old chronicles, the Saxon and others, written in a language that I do not understand. The historian, whom I am reading, may have misconstrued his authorities, or the authorities themselves may be forgeries. Yet I have no doubt about the fact. Why ? Because I very well know that there are and have been a number of scholars, who, if these authorities, were mistranslated, or of suspicious, and uncertain origin, would long since have proclaimed it to the world. Suppose it had been an indictable offence to impeach the authenticity of the Saxon Chronicle ? Would this have added to our confidence in the truth of English History ? The very avoidance of an investigation, argues some conscious defect, while the bold challenge for a free examination weighs much with every mind. It is indeed, asserted in several treatises on the evidences of christianity that religion has stood this test ; but the assertion is false. Men, have been and still are, deterred from impugning or controverting the truth of christianity, by the fear of fine and imprisonment ; and when an unlearned man discovers that, spite of this and many other shackles upon a free and candid examination, many of the best informed writers of the last century rejected christianity altogether ; that many others preserved a discreet but suspicious silence ; and that at the present day, European Philosophers, while they speak of christianity with respect, yet teach doctrines totally inconsistent with it ;—can, I ask, an unlearned man who cannot examine the proof for himself, help suspecting that if it were safe to speak out, the number of unbelievers would be greatly increased, and the alleged proofs of christianity sadly sifted ? The same observations apply to the proofs of natural religion. If the advocates of one side, are not only encouraged by the applauses, honor, and respect of the public, but those who dare to take up the other, are stuck into the pillory, who can construe the unanimity of opinion into any proof of the cogency of the evidence ?

It may be answered however, that allowing the additional strength which the evidences of christianity would receive, should it stand the fiery trial of a free discussion, we ought not to risk the souls that may be lost, in trying the experiment. The persecutors of Gallileo, with equal love of souls, might

have declared, that though very likely the Copernican system might be true, yet as it conflicted with the words of Moses, and so might lead to infidelity, the loss of souls was not to be risked for the sake of any paltry scientific improvement. Cant is ever the same ; it neither admits nor deserves an answer.

The force of these two arguments in favor of unrestrained freedom of discussion is so overwhelming, that very few who make any pretensions to reason, are able to withstand them. But says the poet —

He who's convinced against his will
Is of the same opinion still.

Sturdy disputants, after being fairly pushed at the point of the bayonet out of the citadel, are apt to indulge in a vain attempt to maintain themselves in the outworks.

“Far be it from us” —many will say — “to put a stop to discussion and inquiry. But such grave subjects as natural and revealed religion ought to be discussed only in the schools of philosophers, and among the learned, who are capable of comprehending the matter in its full extent. We never can consent to hear these sacred subjects bandied about before an audience of the poor and the ignorant, who may be seduced into impiety, but who cannot be *convinced*, because they are not capable of comprehending an argument.”

Such is the reasoning by which the few have ever attempted to shut out the many from a fair participation in the benefits of society. It is an argument which has been urged against learning the poor to read — because forsooth, it would but enable them to study infidel and radical newspapers. It has been used as an argument against admitting the mass of the people to any participation in public affairs, — because they are too ignorant to form any correct opinion about them. The ignorance of mankind is truly deplorable ; but it will hardly be remedied by annihilating the freedom of public discussion, the only means, in fact, by which knowledge is called forth, and propagated. If men are to be elevated, we must begin by treating them, as though they had already attained that elevation. To treat them like slaves, fools and children, is certain to make them so. Besides, it seems hardly fair in the advocates of an established creed to complain of the ignorance of the people, since that ignorance is all in their favour. The most pointed objections to christianity are founded on considerations, which can only be comprehended by well informed persons, while, as respects several popular arguments in its favor, the less informed a man is, the more weight he will be likely to allow them. The more ignorant a people are, the more strongly do they adhere to traditionary systems. It is not in the most ignorant but in the most enlightened countries that infidelity has prevailed ; and in all countries, where superstition does not ride triumphant over reason, it will continue to spread till, religion, by having passed the ordeal of a

free, and critical examination, shall be able to urge in its favor a new argument — the strongest, which the nature of the subject admits.

The mass of the people are not quite so incapable as they are some times represented, of judging with considerable correctness, on many subjects, even of an abstruse nature. Much depends on the point of view from which a subject is regarded. The poor and uninstructed see some matters in a true light which are presented to the eyes of the rich and learned through a very distorted medium. The prejudices of schools and drawing rooms, are not less absurd, and are often more obstinate, than those of the workshop or the cellar. If correct information, generally *descends*, it sometimes takes the contrary direction. All know that the *Reformation* first commenced; not among the proud nobles or learned churchmen, but among the artisans and shop keepers of the towns. The aristocratic Blackstone, will tell us what was the origin of British liberty. "Our ancestors," says the learned commentator, "*heard with horror and detestation, those sentiments rudely delivered, and pushed to most absurd extremes, by the violence of a Cade, and a Tyler, which have since been applauded, with a zeal almost rising to idolatry, when softened, by the eloquence, the moderation, and the arguments of a Sidney, a Locke, and a Milton.*"

Allowing however, that fair argument and sober discussion must be unshackled, there are many who at the last resort, deny, that any one ought to be permitted to make the sacred truths of religion the objects of vulgar ridicule, licentious sneers and loose ribaldry.

If we deprive an opponent of the privilege of ridicule, we strip him of one of the sharpest weapons of controversy. Whatever may have been said or written to the contrary, ridicule is one of the keenest of arguments, and is in fact used more than any other. Not even Mathematics can dispense with it. All the *reductio ad absurdum* demonstrations proceed on the supposition that ridicule is a test of truth. They show that certain propositions must be true, by showing that all contrary suppositions are *ridiculous*. What argument do the clergy use more than ridicule? What is the argument of the Jewish prophets against idolatry? What is the whole course of reasoning against transubstantiation? Does it not consist entirely in showing what a *ridiculous* notion it is? So the argument against the doctrine of the trinity; — and what more common employment of writers on the evidences of Christianity than to expose the arguments of objectors to merited contempt? Incongruity is the foundation of ridicule; and propositions that are incongruous to acknowledged truths, cannot be true. If Religion, natural or revealed, is in any of its particulars really ridiculous, it will be a very strong argument against its truth, — to the possession of which the world is entitled. If Religion however, as we believe, is not ridiculous,

vain is the attempt of wits to make it appear so. Several critics, both in ancient and modern times, employed themselves in exposing the *absurdities* of Homer, yet Homer still maintains his reputation.

Ridicule is one of the means essential to a free discussion of any topic ; — as to “ licentious sneers,” and “ loose ribaldry” such objections are too vague to be made the foundation of an argument. The Catholic complains of the “ licentious sneers” with which protestants talk about nunneries, and the celibacy of the clergy ; the orthodox complain of the “ loose ribaldry” with which Arians and Socinians have treated the whole doctrine of the immaculate conception. There is no end to charges like these ; — yet few disputants begin to complain about the manner of an opponent, till they find something in his matter, not very easy to answer. It is much to be wished that controversies of all sorts, were conducted with more good nature, and in much better taste ; but this is a grievance of which theologians ought to be the very last persons to complain, since they first infused into public discussion that spirit of furious and fanatical rancor, known as the *odium theologicum*, a spirit as hostile to truth, as to charity, and which though gradually expiring, is not yet wholly extinct.

So much for the reasonableness of the law ; let us now say a word or two on its constitutionality.

It will be objected in the outset, that the statute in question, was passed only two years after the Constitution was made ; that the legislature which enacted the law probably contained many who helped to make the Constitution, and that *they* would be likely to have comprehended its spirit and meaning, much better than *we*. Not so. The framers of the Constitution felt and acknowledged the truth of certain general principles of policy, which they incorporated into that instrument ; but of the real force, the true extent, the practical application of these principles, they were not always fully aware. So Luther put forth the grand dogma of private judgment in matters of religion, and Calvin zealously adopted it, — yet how blind must these men have been to the real meaning of their own principles, when the one recommended the persecution of the anabaptists, and the other burnt Servetus ?

Again, it will be urged that the judges have always held the law to be constitutional. It does not appear that the subject has ever been brought distinctly before the Court. But suppose it had, Judges are not infallible ; — and if it took the clergy fifteen hundred years to discover that the doctrine of toleration is taught in the gospels, we have no cause to wonder, should it require mere laymen a half century or so, to discover the same doctrine in the constitution.

The Constitution declares in the second article of the Bill of rights, that no subject shall be hurt, molested or restrained in *his person, liberty or estate* for his religious profession or senti-

ments. This clause sweeps away at once, and beyond the possibility of denial, all that part of the statute which confines itself to the protection of the *Christian* religion. It is in vain to deny that the profession of *Judaism*, *Braminism*, *Mahometanism*, or *Deism* is a profession of religious sentiment: and *Deism*, I suppose will be allowed the purer religion of the four, since it comprehends what the others have of truth, and avoids their manifold errors.

Now a *Jew*, a *Hindu*, a *Moslem*, or a *Deist*, in professing their own religious sentiments, does, and must, deny the truth of Christianity. It is imposible to refuse them the liberty of that denial, and at the same time to leave them the unrestrained freedom of religious sentiments for which the Constitution provides. This clause too, sweeps away all those provisions which relate to the actions of the Deity, viz: his creation, government, and final judging of the world. God's creation and final judgment of the world are doctrines exclusively christian; and his government of it — by which must be understood, the doctrine of a particular providence — has been either doubted or denied by most of the Deists.

The only question then which remains is, does this clause protect the Atheists, who impiously deny God, and ridicule all religion?

When it is said that no man shall be molested for his religious sentiments, he certainly must be allowed not only to choose his creed among such as may offer, but likewise to reject the whole. Can it be justly said that a man is not molested or restrained in his religious sentiments, if out of a dozen religions, all of which he esteems equally false, you compel him to choose one? The objection that an Atheist does not come within the clause, because an Atheist has no religion, is a mere verbal quibble. It would be quite as fair and as true, to say that Unitarians and Universalists do not come within the provision because they have no religion. True, in a certain narrow and confined sense which some persons choose to give to the word, they have none; and with equal justice, they congratulate themselves, in their turn, on an exclusive exemption from bigotry and fanaticism. By *religious opinions*, in the Constitution, must be understood, *opinions concerning invisible and supernatural existences, their influence on human affairs, the means of propitiating their favor and escaping their displeasure*. Such is the subject matter of religion. Now, on these subjects, the Atheist has opinions as well as other people, and by the constitution is most undoubtedly entitled to their unrestrained profession.

Indeed it seems, that so thought the framers of that instrument. In the former part of the second article they declare "that no subject shall be hurt, molested or restrained in his person, liberty or estate, for worshipping God, in the manner and season most agreeable to the dictates of his own con-

science." Now if this were the only liberty intended to be granted, if, at all events, we must worship the Deity, and were only to be allowed our choice of the manner and the season, here the article would have stopped. It proceeds however — "or for his religious professions or sentiments." Here, under this clause, is an additional grant ; we have the right not only to select the time and manner of our worship, but to refuse it altogether, should such be the dictate of our religious sentiments.

It is unnecessary to pursue the argument. The multiplication of words is apt to mistify. Let common sense decide upon the soundness of the above interpretation.

After years of struggle, the free spirit of the age has succeeded, by the lucky aid of most unexpected allies, in expunging from the constitution, the third article of the bill of rights, an article which would have been more appropriately introduced into a Bill of pains and penalties. The constitution is purged ; but the statute book still contains several traces of that priestly domination which once prevailed among us, and turned the State into a mere dependency on the Church ; a system, which however it might promote the spiritual well-being of the people, was fatal to their temporal happiness and welfare. Although a certain party was induced by certain peculiar reasons to assist in annulling that same third article of which they had once been the most strenuous defenders, there have been some indications, in certain quarters, of a desire to bring back those good old times when the "ministers" not only controlled the election of our Legislators, but guided their deliberations. It is time that those who amuse their fancies, with dreams like these, should be deprived of the countenance which certain existing laws seem to furnish them. *Seem*, is the word : — for these Laws, to all practical purposes, have been dead these twenty years. The present attempt to enforce one of these antiquated and unconstitutional statutes, will it is to be hoped, be the occasion of repealing the whole. The matter will hardly fail to attract the attention of the next legislature.

S P E E C H

OF

ABNER KNEELAND,

DELIVERED BEFORE THE FULL BENCH OF JUDGES

OF THE

SUPREME COURT,

IN HIS OWN DEFENCE,

FOR THE ALLEGED CRIME OF

BLASPHEMY.

LAW TERM, March 8, 1836.

BOSTON:
PUBLISHED BY J. Q. ADAMS.
1836.

SUPREME JUDICIAL COURT.

JUSTICES.

LEMUEL SHAW, of Boston, Chief Justice.

SAMUEL PUTNAM, of Boston,

SAMUEL SUMNER WILDE, of Boston, } Associate Justices.

MARCUS MORTON, of Taunton,

Attorney General, **JAMES T. AUSTIN**, of Boston.

PREFACE.

As my defence at the last trial before a Jury was not published, nor yet even the names of the Jurors who convicted me, except in the Investigator, I feel disposed to insert their names here, in order to perpetuate their memories; for it is but justice due to myself, as well as to posterity, to have the names of such men known.

They are the following:—

HENRY F. BAKER, (*Foreman*) 40 Central Wharf.

THOMAS G. ATKINS, 143 Washington Street.

THOMAS P. BARNES, 28 Dock Square.

DANIEL BALLARD, 263 Ann Street.

MARTIN BATES, 10 Ann Street.

SAMUEL BEALS, 16 Friend Street.

ALVAN DRAKE, 4th Street, South Boston.

DAVID ELLMS, rear of Broadway South Boston.

JEFFERSON C. FARRAR, 346 Washington Street.

JOHN FITCH, 38 and 40 Central Street.

DAVID FLOYD, Jr.

CHARLES WILKINS, 33 Long Wharf.

I also think proper to insert here a few sketches of my defence, such parts as were not included in my former speech, nor were they embraced in the present one, so that the reader may have in the three published speeches, Mr. Dunlap's and my own, all that has been said, or the substance of all that has been said, in my defence. There was but little original, after the introduction, in my last speech. I commenced as follows:

May it please your Honor, and you Gentlemen of the Jury.

I was in hopes, for the sake of the credit of my native state, that this cruel and absurd prosecution would never have been called up again. But we are framing materials for the future history of this Commonwealth. And in less than a century from the present moment, the sons of Massachusetts will blush for the deeds of many of their fathers of the nineteenth century. They will then be as much astonished, as we are now at the hanging of the early Quakers in Boston.

This is now the fourth time that I have been arraigned before a human tribunal for alleged crimes which, if committed at all, were committed against a super-human Being—a being who has said, “Vengeance is mine; I will repay.” No less a crime than blasphemy against Almighty God! The novelty, as well as the absurdity of such a trial, one would have supposed, should have filled with blushes the countenances of each and of every individual who has had any thing to do with it on the part of the prosecution; and yet, both lawyers and Judges come forward on the part of government, with all the seeming gravity as though they really thought the cause of God at stake, and that they were doing even God himself an essential service. You will look in vain in all the records of our courts, since the days of witchcraft, to find an instance where an individual has been pursued by the government, trial after trial, when a Jury cannot agree, as it were like so many blood hounds eager for their prey, where there is no more prospect of a conviction than there is of prevailing on men to violate their consciences, their oaths, and the constitution of their country;—and all for what? Not for any act that has injured either God or man; (except in the imagination of credulous mortals); but for mere matters of opinion, or some supposed indelicacies of style of which neither the statute, nor the constitution, takes any kind of cognizance, much less considers as criminal.

But as long as I am thus pursued, so long I must be allowed to make my defence; and although it is harrassing, perplexing, expensive, and even vexatious to me, as an individual, as well as to many of my friends, yet, nevertheless, so far as the cause in which I am engaged is concerned, I do not regret it; for it has already advanced that cause much faster than I could have done by continuing on my course unmolested. The maxim will apply to Free Enquiry as well as to Theology, “The blood of the martyrs is the seed of the church.”

GENTLEMEN: I stand before you to plead, not so much for myself as an individual, but for a cause in which the rights and privileges of each and every citizen of the United States, and particularly of this Commonwealth, are involved; and therefore I must crave not only the indulgence of the court, but also your patience and attention. This is the more necessary, because at each of the former trials some new principles seemed to be set up, and new ground assumed, so that I hardly know what I have to meet until I am called to the bar. Hence it seems necessary that I should review what is past, as well as to anticipate what is to come.

[Here I went into an examination and review of the contradictory opinions of the Judges on the former trials, extracted from a pamphlet entitled "A Review," &c., By a Cosmopolite. I then went into an examination and defence of the third article in the indictment, passing over the two first, because they had been given up by the Attorney General. But I omit every thing here which will be contained in the following Speech. In speaking of my religious opinions, I showed that they were the same as those of the late Dr. Spurzheim, and also as stated in James i. 27. In speaking of this religion, I observed as follows :]

It consists not in *believing*, but in *doing* ; "to visit the widow and the fatherless in their afflictions, and to keep himself unspotted from the world." This religion has no reference to another world ; but its acts are wholly confined to this life ; and yet James calls it "pure religion, and undefiled." Now who is prepared, or authorized to say that such a religion is not under the protection of the Constitution ? Yet such protection has been denied me by the Court, on a former trial, and to obtain which protection, I now appeal to you. I claim and profess to be not only a believer in, but a practiser of, this pure and undefiled religion ; and I challenge the whole world to prove to the contrary. The Attorney General has attempted to show you the immoral tendency of my opinions. Let the moral, or immoral tendency of his religious opinions, and mine be shown, by our own respective moral characters ; however pure *his* may be, I am willing to undergo the test of the severest scrutiny.

GENTLEMEN : I am aware it is a very delicate subject for a man to speak in his own defence on the subject of morality. But it is sometimes necessary, and is always just. Hence in this respect, I have nothing to fear. For I do not hesitate to say, that in point of moral purity, (making all due and reasonable allowance for human frailty,) I stand before you like a lofty oak that has braved the storms of more than sixty winters, and yet remains unscathed. In regard to the alleged crimes with which I stand charged, my heart is as pure as the mountain snow, far above all earthly vegetation. And as to the purity of my motives in all that I have said, written or published, my mind is like the morning sun after a cloudless night, when there is neither mist nor vapor arising from the earth to obscure its brilliancy. And it is on this account, though unaccustomed to speak in Courts, I stand before you, the Court, and all the officers of government, without the least embarrassment ; well knowing that,

"Thrice is he armed who hath his quarrel just ;"—SHAKESPEARE.

but I will not finish the sentence, lest it should be thought to be too personal.

[After going into a full examination of the facts, the law, and the Constitution, I closed in the following words.]

On the last trial, being fatigued and almost worn out with it, I requested the Jury, if they could not agree to acquit, to agree to convict. I regretted it afterwards, as I believe it had the effect of turning two of the jurors against me after the first balloting. I now request, if there is even ONE of the jurors who really believes me innocent of the alleged crime, that he will not yield to the opinion of any other man whatever; but to protect me to the last moment against this arbitrary, cruel and unjust law; even against all the frowns of bigotry, superstition and intolerance. Yes, gentlemen, you have sworn to decide this case according to what you consider the law (for you are the judges of the law in this case) and the evidence before you. On your oaths, therefore, I ask you to protect me against injustice and intolerance, as you will answer it to your God, your own consciences, and the people of this Commonwealth.

[Here ended my Speech on the last trial.]

But notwithstanding all this labored argument, I was still convicted. One of the jurors, indeed, was in favor of an acquittal; but rather than to be kept out all night, he yielded, on condition that I should be recommended to the mercy of the Court; believing that *that* would be all but tantamount to an acquittal. But it yet remains to be seen whether I was recommended to the mercy of a Court, possessing the common feelings of humanity, or whether I was recommended to the mercy of men who may be compared to tigers, thirsting for their victim, having already as it were got a taste of his blood!

But to let the reader and the public know the arguments and the authorities they had to consider; I now present them with the Speech I delivered on that occasion.

The following is the opinion of Judge Jay, as delivered to the Grand Jury in West-Chester County, N. Y., which shows clearly his view of this subject. He speaks, it is true, "of the abuse of this right," (that of the freedom of the press,) but neither the constitution nor the laws of Massachusetts know any thing about the abuse of such a right, except in a civil action for damages in case of slander.

"The preamble of our State Constitution declares 'WE THE PEOPLE of the State of New York, do establish this Constitution.' The

Constitution thus established, ordains that 'every citizen may freely speak, write and publish, his sentiments on ALL SUBJECTS, being responsible for the abuse of that right; and *no law shall be passed to restrain or abridge the liberty of speech or of the press.*' The Constitution explains what it means by the citizens being *responsible* for the abuse of this most inestimable right, by providing that no man shall be convicted by a JURY for a libel in thus speaking, writing and publishing his sentiments on any subject, provided the Jury shall be satisfied that the matter charged as libellous is true, and was published with good motives, and for justifiable ends. It is therefore evident that a citizen of New York is responsible for speaking, writing and publishing his sentiments only to a jury of this country, and to no other men under heaven. THIS GUARANTY OF FREEDOM OF DISCUSSION, WHICH THE PEOPLE OF THIS STATE HAVE GIVEN TO EVERY CITIZEN, EXTENDS EQUALLY TO RELIGIOUS AND POLITICAL TOPICS, AND IT IS IMPOSSIBLE TO CONCEIVE ANY SUBJECT WHICH WE MAY NOT CONSTITUTIONALLY DISCUSS. THE RIGHT IS SACRED, AND NO INDIVIDUALS, WHETHER MAGISTRATES OR OTHERS CAN INTERFERE TO PREVENT ITS EXERCISE. HENCE, INFIDELS AND CHRISTIANS, AND POLITICIANS OF EVERY NAME AND CHARACTER, HAVE AN EQUAL AND UNDOUBTED RIGHT TO PUBLISH THEIR SENTIMENTS, AND TO ENDEAVOR TO MAKE CONVERTS TO THEM. OF THE ABUSE OF THIS RIGHT, GRAND JURIES ARE IN THE FIRST INSTANCE THE ONLY JUDGES, AND COURTS AND JURIES ARE THE ONLY PERSONS TO WHOM THE PEOPLE HAVE DELEGATED THE POWER OF PUNISHING IT. EVEN THE LEGISLATURE CANNOT MEDDLE WITH THIS RIGHT, AND ANY LAW THAT MIGHT BE PASSED TO ABRIDGE IN THE SLIGHTEST DEGREE THE FREEDOM OF SPEECH OR OF THE PRESS, OR TO SHIELD ANY ONE SUBJECT FROM DISCUSSION, WOULD BE UTTERLY NULL AND VOID; AND IT WOULD BE THE DUTY OF EVERY GENUINE REPUBLICAN, TO RESIST, WITH ENERGY AND DECISION, SO PALPABLE A VIOLATION OF THE CONSTITUTION, SO AUDACIOUS AN OUTRAGE ON THE DECLARED WILL OF THE PEOPLE."

It was admitted by Judge Wilde, that Judge Jay was good authority; but that the above, was a mere newspaper report, and therefore could not be admitted by the Court as such, though he gave me liberty to read it to the Jury. Since that trial, I wrote to Judge Jay on the subject, to which, I received a very polite answer, which I thought of making use of in my defence; but finally did not. The following is an extract from Judge Jay's letter.

"The defendant had no doubt the right to avail himself, of the arguments and opinions of any person, whatever, and if he thought it of consequence to prove to the Jury, that a certain opinion was held by a certain individual, perhaps, something more than a newspaper report, would be required to establish the fact. I, therefore, certify, in compliance with Mr. Kneeland's request, that the extract in question, is to the best of my knowledge and belief, a correct extract from my charge, with the exception of an unimportant typographical error, [which error, I presume, is corrected above,] and that the opinions expressed, are entertained by me."

But notwithstanding the above opinion so clearly expressed, and from such high authority too, as the words which I have put in capitals express, (and they ought to be printed in letters of gold,) yet such was the influence of the Judge over the minds of the Jury, (for I cannot impute it to any thing else) I was convicted. But it yet remains to be seen, whether such a verdict can be sustained against a man *sixty-two years of age*, who never to his knowledge, or intention, has injured a fellow being to the value of one cent; and who, surely, never entertained a thought of injuring God.

ABNER KNEELAND.

Boston, April 7, 1836.

SPEECH.

May it please the Court :—

IN consequence of the lamented death of the eloquent advocate and learned Counsellor on whom I relied to carry me through this protracted cause, I am constrained to undertake my own defence. Unskilled as I am in legal forms and the practice of Courts, I trust I shall receive that indulgence, for the many inaccuracies it may be expected I shall fall into, which the circumstances of the case require. And should I not confine myself strictly to the rules observed in arguing questions of law, I trust that the novelty of my situation will give me some claim to a liberal construction of those rules, or be my apology for a departure from them. At the last trial before a Jury, the only evidence against me, was the letter to Mr. Whittemore—and I admitted the authorship of that letter, because no proof of the fact could be adduced by the government. This being the case, I apprehend the other articles complained of should have been stricken from the indictment. The Attorney General gave me to understand explicitly that if I admitted the authorship of the letter to Mr. Whittemore, I should not be proceeded against upon the other articles; but on application to him since, for a written statement to this effect, he declines giving it; and a general verdict having been rendered against me, upon all the articles complained of, I have thought it necessary to enter at large into an examination of all the articles. This will swell my argument considerably; but if the Government's Attorney will relieve me of all the articles except the letter to Mr. Whittemore, and the Court will instruct me that, after a general verdict, I can safely do so, without danger from the articles other than the letter to Mr. Whittemore, it will materially abridge my remarks, and I shall confine myself to that letter alone.

[Here the Attorney General stated the fact which he stated on the last trial; but still said that the other articles went to show the general character of the paper, and served to aggravate the offence. The Judges, after a little consultation, de-

cided that the whole must be considered open for examination. Mr. K. therefore proceeded.]

Upon considering the causes assigned by me in my motion for a new trial, it seems that the objection that the Judge charged the Jury, that the letter to Mr. Whittemore amounted to a denial of God, will be as effectually considered in the motion in arrest of judgment; for if the Court shall be of opinion, as I trust it will, that the letter does not amount to a denial, in that case the judgment will be arrested, and hence a new trial will be unnecessary. I shall therefore not notice the motion for a new trial; but proceed to an examination of the causes in arrest. And,

I. That the facts alleged in the indictment, do not constitute any offence either by the common Law, or by any statute of Massachusetts.

Let us now examine the facts of this case, and compare the articles complained of, with the Statute against blasphemy, bearing continually in mind the established principles of law, that the facts of a case must be brought within the very letter of a penal statute, the "bitter letter of the law," to be within its operation. The first article complained of, and which, it will be constantly recollected, was extracted from the Free Enquirer of New York, and printed during my absence from the City, is not a "denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world;" it is not a "cursing, or reproaching Jesus Christ, or the Holy Ghost;" it is not a "cursing, or contumeliously reproaching the Holy Word of God," "by exposing" the "canonical scriptures" or "any part of them, to contempt and ridicule." These are the offences against the Statute, described in the words of the Statute. Now this article first complained of, is not a denial, nor cursing, nor reproaching, of any person, or thing. It is a statement in relation to the doctrine of, or a belief in, the miraculous conception of the Virgin. This is the head and front of this offence, and though God, Jesus Christ, and the Holy Ghost, are named in the Statute, there is no mention made of the Virgin. The article denies nothing, curses nothing, reproaches nothing. It is not even a denial of the truth of the doctrine of the miraculous conception; but the doctrine is only stated in terms differing from those of the scripture, or the standard of the Church.

This article, therefore, I repeat, is no more than a statement in relation to the belief in the miraculous conception. Has not a man who does not believe in that doctrine, a right, I mean a strict legal right, to assail it by the power of argument, and the force of satire? The most deadly weapons are used with as much zeal in religious controversies by theologians, as by the

gladiators in politics and other disputes, in which the passions of men are enkindled. The charge of Judge Putnam, admitted that even the Atheist might propagate his opinions; and the charge of Judge Wilde, admitted that the truth of Christianity might be denied, and both annex the condition that it must be done decently. This I suppose to mean that in discussing these questions, I am not to transcend the accustomed limits of polemic and theological controversial arguments; and hence, I proceed to show, by naming and quoting from the works of some authors, what has been considered the proper mode of treating these controversial questions.

This very doctrine has been before assailed by reasoning and ridicule. The pious Catholic believes in it, from the Monarch to his humblest subject—and the interest of kingdoms, as well as families, are often in prayers of holiness, committed to the care of the Holy Virgin. None are more devout and sincere than the Roman Catholic brethren in this belief, and there is none from whom I differ in opinion, whose feelings I should be more inclined to respect. The members of the Church of England cherish the same belief, which is also extended throughout the ranks of Christians of almost every denomination. But there is another class of Christians who yield to none in sincerity of their faith, and who consider this belief, wholly erroneous. Many of the Unitarians, particularly those who believe in the doctrines of Priestley and Belsham, do not believe in the miraculous conception, and doubt the authenticity of the passages in the common editions of the Gospel, which are supposed by others to establish its truth. But I say the text on which the doctrine is supposed to be founded, which purports to be a quotation from Isaiah, is falsely quoted, and is of course a false text; a doctrine founded on a false text, can be no other than a false doctrine, and to ridicule a false doctrine is not blasphemy.

A false text cannot be the canonical scriptures intended to be protected by the statute; and I am confident this Court would not knowingly lend its sanction, and by its judgment, legalize a forgery, or an interpolated passage upon what are generally considered the Holy Scriptures.*

* The two texts, according to the learned Montanus, read thus :—

Isaiah vii. 14. *Ecce virgo prægnans et pariens filium, et vocabis nomen ejus Himmanu-el.*

Matt. i. 23. *Ecce virgo in utero habebit, et pariet filium, et vocabunt nomen ejus Emmanuel.*

The Bible of Montanus, which I here offer for the examination of the Court, contains the original text in Hebrew and Greek, as well as Latin, and was printed in 1657. The first edition of this Bible was printed in 1571.

The doctrine of the miraculous conception, was at a very early period of the history of the Christian Church, a subject of dispute. The belief of the doctrine was denounced with virulence by Eusebius, one of the early fathers, as a "madness." If the writer of this article believed with Eusebius, that it was a madness, had he not as good a right as Eusebius, to ridicule and denounce it? If this writer believed with Eusebius, that it was a "madness," he could like him, denounce it, and in terms as strong, without violating the just rules of criticism observed in polemical discussions on this subject, and hence, according to the opinions of the Judges before referred to, the writer has done no more than he had a right to do. The Judges say that the truths of Christianity may be denied if done decently. This criticism is decent, according to the general course of discussions on this subject. For if the doctrine be a heresy, it must be admitted to be of a kind, not likely to be treated with much delicacy by unbelievers. If it be a false doctrine, although the manner adopted in assailing it, may be improper, yet surely it cannot be blasphemous to attack a heresy and a "madness."

If I, who do not now profess to believe in Christianity, in the orthodox sense of that term, am to be condemned for having without my own knowledge constructively published the words of another, what shall be said of those, who, professing a belief in Christianity, have employed much coarser language, when attacking the belief of their fellow christians? If all the violations of the laws of decency, and propriety of manner in religious controversies, are to be punished, your Courts must be multiplied, and their whole time will be occupied with corrections of the virulence of religious quarrels, to the entire exclusion of all other business.

The works of Voltaire from which this article is copied, and which contain language much more vulgar than this, if this be considered vulgar, are circulated from and read in the Athenaeum, of which Institution the prosecuting Attorney, who is now here persecuting me, (as I conceive) on a charge of Blasphemy, is a proprietor; although at a glance it will appear that as one of the proprietors of the Athenaeum, he is as much guilty of blasphemy as I am, if the publishing of this article amounts to that offence.

Dr. Priestley, in his History of the corruptions of Christianity, contains a reference to a work of Paschasius Radbert, one of the champions of the doctrine of transubstantiation, on the subject of the miraculous conception. This work, though undoubtedly written by a divine of unsullied reputation, is nevertheless composed with such a particularity of description, that I should offend the modesty of any audience, by reading the

passage referred to. Priestley's corruptions, vol. 2, p. 37, 2d Birmingham edition.

Indelicate as may be considered the article in my paper, yet it will bear a comparison with a celebrated work of an eminent divine of the English Church, who aspired to be a Bishop, and who, after this publication, was appointed a Dean of the Church, in the second city of the British Empire: I mean Swift the Dean of St. Patrick's, in the city of Dublin, and I allude to his *Tale of a Tub*, which is now before me. This work was written to ridicule and repress the Roman Catholic Religion, and the Calvinistic persuasion, and to build up the Church of England; for Swift was a High Churchman in his religion. See *Tale of a Tub*, pp. 107, 111, 113.

[Here I presented the Court with a copy of the passages referred to, which are quite too vulgar for modern taste.]

You will find this indecent book in the library of Harvard College; in the Boston Atheneum, among the volumes of the British classics, in the private libraries of the most accomplished scholars of Europe and America, in the most respectable book stores, and publicly sold at the book auctions. Yet we have never heard of any indictment, either in England, or this country, for the publication of the *Tale of a Tub*, and the writer has been honored both in his own time, and ever since, as one of the most brilliant luminaries of British literature. All this has passed under the eyes of the Judges, Juries, and prosecuting officers of Great Britain, and the United States, and to this day, no one has complained. No prosecution has been instituted, against the printers who publish; the booksellers who sell; the Directors of the libraries who circulate this most indecent production of an eminent divine of the Church of England. If those who minister in holy things, the servants of the altar, by their discussions establish the rules to be observed in treating these subjects, it can hardly be expected of those who profess no respect for the christian religion to be more nice, or delicate in their publications, than is prescribed by the rules so established.

Is vulgarity the privileged monopoly of the high dignitaries of the Church, like Swift? If those dignitaries set such examples of a prostitution of sentiment, and style, they have no right to expect from the adversaries of the Church more propriety of manner, than they practice in their controversies with each other. Why begin with me, when there are so many offenders of high rank to be called to the bar before my turn can possibly arrive?

This offensive article, which is the subject of the indictment, is translated from Voltaire, who has a whole article in his *Philosophical Dictionary*, on the most offensive word in it, and whose

writings may be found in the same libraries, as those of Swift, and are circulated in the same manner, by the very persons who are charging me with blasphemy, for an accidental insertion in my paper (during my absence from the city,) of the translation which I have mentioned.

[Here I went into an illustration, and gave the substance of the article from Voltaire's Philosophical Dictionary.]

This is the land of toleration. No, that is not the proper word; for who shall presume to tolerate another, when the latter has an undeniable right to enjoy and maintain his own opinions? I should have said this is the land of civil and religious freedom, guaranteed by written Constitution of Government, so plain, that he who runs may read the privileges which they secure, and the rights they proclaim.

With these remarks I dismiss the first article complained of in the indictment.

The second article, as well as the first, is not mine. It is neither my composition, nor is it any emanation of my mind. It is contained in a communication not read by me until it was in type, and though I admit, as the law is not always founded on morals, this fact may not be a legal defence. Yet it certainly absolves me from all moral guilt.

But has the writer taken more liberty than many Christians have done on the subject of prayer? And here I suppose the rules of criticism will again apply—if the author has not gone beyond the usual limits prescribed by controversial writers on the subject of prayer, why, then, his matter is “decent” and not a violation of the law.

In Southey's History of the Church, vol. 2, page 350, we find that the Puritans disparaged social prayer. The following is an extract from that work.

‘Because of the superstition connected with the mass, the Puritans, falling into an opposite extreme, disparaged social prayer and thanksgiving, and attached as much importance to sermons as the Romanists to what they deemed the sacrifice of the altar. They maintained the extravagant and pernicious opinion, that the scriptures had no efficacy unless they were expounded in sermons, the word no vital operation, unless it were preached from the pulpit; that prayers and sacraments, without sermons, were not merely unprofitable, but tended to further condemnation.’

Our Puritan ancestors in this Commonwealth were not more mild in their denunciations of the prayers of the Church of England, than were their brethren the other side of the water.

Let me read an extract from the last will and testament, of one of the early shining lights of the New England Churches, the celebrated Chauncey, the second President of Harvard College. It contains an attack upon the prayers of those from whom he dissented, of the most violent character. The follow-

ing is an extract from the biographical article on President Chauncey, contained in Peirce's History of Harvard University, p. 21.

'He did not even omit it in his last will, the preamble to which contained strong expressions of self-condemnation for his "so many sinful compliances with, and conformity unto, vile human inventions, and will-worship, and hell-bred superstition, and patcheries stitched into the service of the Lord, which the English *mass-book*, that is, the Book of Common Prayer, and the ordination of priests, &c., are fully fraught withal.''

This ebullition of bitter feeling is not poured forth in a fugitive newspaper article; but deliberately recorded in that solemn act, in which a man usually bequeaths his soul to Heaven, while he leaves his earthly prejudices to be buried with him in the grave. Yet here we find one of the most eminent divines and scholars, who have illuminated and adorned our country, a famous President of the most famous University in the new world, denouncing the forms of prayer adopted by the second Church in Christendom in power and renown, as a "hell-bred superstition." Compare the extract from President Chauncey's testament in relation to prayer, with the article complained of on the subject of prayer in my paper called the Investigator. If the passage in the paper be offensive levity to any one, the passage in President Chauncey's last will, is full of uncharitableness, and all the cruelty of ungoverned wrath; carrying the hatred of religious contention, even beyond the grave. If President Chauncey had a right to assail the modes of prayer, in use, among one class of christians, is not the right of my correspondent, and of myself also, equally indisputable, to assail the modes of prayer, which we disapprove, and are disposed to condemn? Surely levity is not more objectionable and illegal than deliberate hate, recorded in a solemn memorial destined to command the attention of posterity, to the latest generations of the Alumni of Harvard University. But whatever the writer of the article intended, the words of his communication do not bring him within the Statute. It is no denial of God, or of any thing else. It is no cursing, or contumeliously reproaching any Being, or thing, whatever. It is merely censuring Mr. Strong, or some one else, for disturbing the peace and quietness of a sick person, by his prayers.

If prayer be a "hell-bred superstition," surely no language can be too gross to assail it with. A "hell-bred superstition" should be assailed not only with levity, but with the heaviest denunciations, which language can express. Suppose that prayer had been stigmatized in the columns of my paper, as a "hell-bred superstition," instead of being treated as it has been by my correspondent—Do the Court think that the malice

of my persecutors would have been diminished by that circumstance? Whoever heard of President Chauncey being accused of blasphemy on account of his denunciations of prayers in the Episcopal Church? If I am guilty of this crime, is he not doubly guilty? Are not the Proprietors of the Atheneum, (the Attorney General, and for aught I know your Honors among the number,) equally as guilty of blasphemy, for circulating Peirce's History, in which prayer is denounced, as a "hell-bred superstition," as I am for publishing this article? There can be but one answer, and that in the affirmative. I then say that this kind of language is common in the treatment of these subjects; and that unless about one half of the community are guilty of blasphemy, the language used in the second article complained of in the indictment, is "decent."

[Here I presented a written copy of all that part of my letter to Mr. Whittemore contained in the indictment, to each of the Judges, and also a copy to the Attorney General, that they might observe particularly the pointing, &c., and thereby better understand my argument.]

I now advance to the consideration of the third article of the indictment; and, I wish to have it carefully examined, and let us see if it comes within the letter of the statute. The first paragraph is the one in which it is contended, that I have denied God; and it seems to be wholly relied upon, as constituting a criminal offence. There is no pretence, that, in any part of this editorial article, there is any thing like a contumelious reproaching of God, Jesus Christ, the Holy Ghost, or the Holy Scriptures. The offence, and the whole offence, if there be any, consists in denying God. Now what are the words? They are the following:—

"Universalists believe in a god which I do not; but believe that their god, with all his moral attributes, (aside from nature itself,) is nothing more than a chimera of their own imagination."

The most which can be made of this paragraph, is an expression of disbelief in the opinions, or creed of the Universalists. Were it even an expression of disbelief in the existence of a Supreme Being, it would not be a denial of God, within the meaning of this penal law, which is to receive a strict construction. There is a material difference between a disbelief and a denial.

The one is a declaration of the state of our own minds; the other, is an attempt to influence the minds of others. The one is a declaration, that the party is not satisfied of the existence of a person, or thing; the other is a declaration that the person is satisfied that there is no such person, or thing. The one may be the expression of doubt; the other is an assertion that there is no doubt on the subject; and the allegation is a positive denial.

The distinction here taken, I earnestly press upon the attentive consideration of the Court. If words are capable of making the line of demarcation between disbelief and denial, clear and distinct, I contend that the words complained of, exhibit that line. They do not amount to a denial; they contain an expression of disbelief, and that is the utmost that can be made of them.

To illustrate this idea: I once believed that there were inhabitants in the moon, as I once believed in Universalism; many people believe it still; but I do not; for I have no evidence that the moon has an atmosphere like the earth. Is that denying that there are inhabitants in the moon? Certainly not. So neither have I denied the god of the Universalists, much less "the god of the statute."

It was the meaning of the Legislature to prohibit a positive allegation, a direct denial of the existence of God, and not punish doubts and disbelief, which may be occasioned in the minds of men by circumstances over which they have no possible control. If the sentence complained of, be the expression of mere disbelief, and all the strain which can be put upon this sentence, will not carry it beyond that extent, the case is not within the provisions of the Statute against denying God. But this is not only not a denial of God, but it is not an expression of disbelief in, (to use the phrase of the Attorney,) "the God of the Statute." It is simply an expression of disbelief in a god that the Universalists believe in: the term "their god" most certainly, according to sound grammatical construction, qualifies the meaning of the term, "a god" and confines it to the god of the Universalists. If, in speaking of the Hindoo god, Juggernaut, I had said that the "Hindoos believe in a god which I do not; but believe that their god, with all his moral attributes," &c., I surely could not be said to have denied "the God of the Statute." The god of the Universalists differs as widely in his attributes from the god of the Calvinists, as their god differs from Juggernaut.

I do say, and shall, until my dying breath, I never intended to express even a disbelief in, much less a denial of, God. I was filled with astonishment, when I found that such a construction had been given to my language. I intended by that article, merely to say, that I dissented from the belief of the Universalists: in saying "I did not believe in their god," I meant nothing more than that I did not believe in their creed. Such language is very common for theologians; to use the term god, as the "god of Calvinism," or "John Calvin's god," for the creed of Calvinism, or John Calvin's creed. It is a sound, and well established rule of construction of a man's language, as it is of consideration of his acts, in a criminal case, to adopt in

all cases of doubt, the construction, or consideration, most favorable to the prisoner. So far has this principle been carried, that formerly it extended even to civil cases. Anciently it was the rule in all civil actions for words, to construe them in favor of the defendant, in the milder sense, when they admitted of different interpretations. 2 Espinasse's *Nisi Prius*, 511; Buller's do., 4. This rule is altered in civil cases, but in criminal cases, it is not relaxed in the least degree.

Without needing to seek shelter under this principle of the law, respecting the construction to be applied to expressions of a doubtful character, I contend that there is no doubt in this case, and that my meaning was clearly and grammatically expressed. I contend that by every rational and grammatical construction, it is apparent, that I did not intend to express even a disbelief in God, much less to deny him, but merely to express a disbelief in the creed of Universalists. I meant to use, and did use the word god, as it is often used, by persons of one opinion, in speaking of those of a different opinion, as synonymous with belief. This is a common, and hence, in these controversies, a legitimate mode of expression, not only in popular discourse, but in the most regular compositions. A Universalist says, "I do not believe in the god of the Calvinists." What does he mean? Surely, he does not intend, and cannot be understood, to deny God. He is not an Atheist. He merely intends to declare, that he does not believe in the creed of the Calvinists. So a Unitarian says, I do not believe in the god of the Trinitarians. He is not an Atheist, he merely means to affirm, that he does not believe in the Trinitarian faith. So, by a similar mode of expression, I intended to declare, and did declare, that I did not believe in the creed of the Universalists, and no more.

Observe the punctuation as well as the wording of this sentence. The words are "Universalists believe in a god which I do not; but believe that *their* god," &c. There is no point after the word "god" in the first clause. The point is after the word "not," and it is a semicolon. But in the next paragraph the punctuation is different. There the words are "Universalists believe in Christ, which I do not," with a comma after the word Christ. In the latter sentence, I intended generally, to express my disbelief in Christ. In the first paragraph I did not intend to express generally and absolutely, my disbelief in God, but in "*a* god," that is, the "god" or belief of the Universalists. I solemnly declare, now, before this tribunal, that this was my object, and that the difference in the punctuation, and mode of expression, in these two sentences, was made deliberately, with the distinct objects of marking the difference in the extent of the professions of my belief in relation to the Deity, and Jesus Christ.

Let us now test this sentence, by the rules of grammar. I do not say, Universalists believe in God, which I do not: nor Universalists believe in God, in whom I do not believe. But this latter expression would have been the proper words, if that had been my meaning. And even that would not have been the "denying of God," within the meaning of the Statute. The expression is, "Universalists believe in *a* god which I do not: evidently implying that I believe in a god, differing in some respects from the god of the Universalists, or the god in which the Universalists believe. This article *a*, limits the meaning as I intended it should. I intended to say, and did say merely, that I did not believe in their god; that is, the "god" or creed of Universalists. What do the grammarians teach us, respecting the office of this article? The rule in Murray is, that the article *a* "is used in a vague sense, to point out *one single thing of the kind* in other respects indeterminate." Murray's Grammar, vol. 1, p. 31. The Trinitarian says, Unitarians believe in *a* god which I do not. Is the Trinitarian an Atheist? Does he deny God, by this expression? Surely not. So far from professing a total disbelief, he intends to express a more extended belief than the Unitarians, to declare that he believes in more than they do, that he believes in the Father, the Son, and the Holy Ghost, whereas Unitarians believe only in the Divinity of God, that is, the Father. Apply this rule to the sentence under consideration, and it is apparent, by the grammatical rule of construction, that I intended to designate and distinguish one particular god, or creed, of the kind of gods, or creeds, worshipped, or cherished in the world.

When I speak of my disbelief in Christ, I do not say *a* Christ, but simply, absolutely, unequivocally, without limit, or qualification, I declare that I do not believe "in Christ." I should have adopted a similar construction of the sentence, and not have used the article *a* in the paragraph respecting God, if I had meant to declare simply, absolutely, unequivocally, without limit, or qualification, a disbelief in God. There can be no rational ground for a doubt as to my real meaning, when the next clause of the sentence is considered. The words are "Universalists believe in a god which I do not; but believe that *their* god," &c. This clearly shows, that the words "*a* god," and the words "*their* god" are used in the same limited sense, and that the object was to define and distinguish the god, or creed of the Universalists, as a particular faith from which I dissented. Had my intention been otherwise, the article *a* would have been omitted in the first clause of the sentence, and the word *their* in the second, and the sentence would have been thus framed, "Universalists believe in God, in whom I do not; but believe that God is a chimera of their own imagination."

But I do not say this: I do not say that I even believe that "their god is a chimera of their own imagination:" but that "their god (aside from nature itself) is a chimera of their own imagination." In saying this, I do not differ from the learned and much lamented Dr. Spurzheim. In his *Natural Laws of Man*, page 4, in speaking of Nature, he says, "3rd, It is used to signify the First Cause personified, and may then be considered as synonymous with God, or Creator." Again, on page 127, he says, "Man involuntarily seeks for the Workman, or Cause of all that is. By reasoning, he arrives at a First Cause, beyond which, he can conceive nothing; this cause personified, is God." Parkhurst, in his *Greek Lexicon*, under the word *KTIZΩ*, says, "As few, if any, of the Heathen Greeks had any notion of *creation*, properly so called; so had they no word to express it." And to which he attaches the following note from Bayle's Dictionary, under the article *Epicurus*, note R. "There was among the Heathen Natural Philosophers a great variety of opinions, about the origin of the world, and the nature of the element, or elements, of which they pretended particular bodies to have been formed. Some maintained that water was the principle of all things, others gave that pre-eminence to the air, others to the fire, others to homogeneous parts, &c., but *they all agreed to this, that the matter of the world was unproduced. They never disputed among themselves upon the question, Whether any thing was made out of nothing? They all agreed that it was impossible.*" Now would these ancient Philosophers of Greece, were they here now, and should they avow their sentiments, be liable to imprisonment for so doing? If so, I am willing to go; for I should certainly be imprisoned with very good and very respectable company.

In adopting the expression "a god" and "their god" to designate a particular belief, I am sustained not only by popular usage, but by some of the highest authorities in Church and State. I shall satisfy you of the correctness of this statement, by an article from the letter of Professor Stuart, of Andover, on Religious Liberty, published in 1830. This letter is an honor not only to its author, but to the country and the age. Professor Stuart says, on the twenty-seventh page of his letter:—

'We limit the meaning to agreement in things, which in our view are *essential*. Such we do honestly believe to be the difference between Unitarians and ourselves. And such, not a few of the Unitarians themselves have avowed it to be. Mr. Belsham declares, that "we do not worship the same God;" and some of your writers and speakers declare, that the God whom we worship is a *devil*. How can you complain, then, that we separate from you? Surely you do not wish to be united in the bonds of communion with such wor-

shippers. If you have any conscience on this subject, it must remonstrate against it.'

Again Professor Stuart says, on the twenty-third page of this letter:—

'I know of nothing in any recent Orthodox publications, which can well compare with the reiterated charges against us, by Unitarians, from the pulpit and the press, of bigotry, of gloomy superstitions, of dark and fraudulent designs on the religious liberties of our country, of worshipping a God who is a tyrant, of propagating horrible and blasphemous ideas of the Divinity, of worshipping a God who is no better than the devil.'

Does Professor Stuart make an unfounded charge? He quotes the Rev. Mr. Belsham, the great champion of the Unitarian faith in England. He refers to the current publications of the day, in support of this statement. He might have referred to Dean Swift, and to Jefferson, to show, that the divines of the Church of England, and that great defender of Unitarianism, speak of the God of the Orthodox, as a different God from him, whom they worship. Dean Swift says in his Tale of a Tub, "Jack," by whom he means the great reformer John Calvin, "introduced a new Deity, who has since met with a vast number of worshippers." President Jefferson, in a letter to President John Adams, dated April 11, 1823, thus expresses himself:

'I can never join Calvin in addressing *his* God. He was indeed an Atheist, which I can never be; or, rather his religion was dæmonism. If ever man worshipped a false God, he did. The being described in the five points, is not the God whom you and I acknowledge and adore, the Creator and the benevolent Governor of the world; but a dæmon of malignant spirit.'

Here then we find Mr. Belsham, President Jefferson, speaking for himself, and the venerable President John Adams, to say nothing of the pamphleteers and sermonisers of the day, referred to by Professor Stuart, proving the correctness of the assertion in the Professor's letter, that the Unitarians declare that they do not worship the same God as the Orthodox, and that some affirm that the God whom the Orthodox worship, is "a Devil." Here is the proof on the spot, before the Court, to prove that in religious controversies, the word God, is often used as synonymous with creed, or belief, by minds of the first order of talents, of the most improved cultivation, and of the greatest authority among men. The position then is established, that it is a common mode of discourse and writing, to deny a belief in the God, who is the object of worship of opponents, intending merely to deny a belief in their creed, or religious faith. This was all that I did, when I said "Universalists be-

lieve in a god which I do not," and I am sustained in the mode of expression, by the authority of some of the greatest names in history. The sentence, I admit, is a little elliptical: when filled up, it will read thus, "Universalists believe in a god, in which god I do not believe; but believe that their god," &c. This was all that I said, and all that I meant; and in saying this, I have but followed, where the greatest men have led the way, and an unfavorable construction cannot be given to my expressions, without violating the dictates of reason, the rules of grammar, and the rules of law, which require, that the turn of the scale should always be given to the prisoner.

Permit me before leaving this part of the case, to enquire, is this kind of language to which I have alluded, and which has been quoted, the privileged monopoly of the eminent churchman, and the great philosopher? If it be not so, then I have as clear a right to use it, as Swift, Belsham, Jefferson, and the other writers referred to by Professor Stuart. Are the publishers of the correspondence of the apostle of liberty indicted? Yet Jefferson says to his illustrious friend Adams, the God in whom Calvinists believe, "is not the God whom you and I acknowledge and adore." What more have I done, than to use a similar expression, respecting the creed of the Universalists? I say "Universalists believe in a god which I do not; but believe that their god," &c., "is a chimera." Jefferson says, not that the God in whom Calvinists believe, is a "chimera," but "a demon of malignant spirit." Does he not deny the God of the Calvinists, as much as I, the god of the Universalists? Yet Jefferson so far from professing Atheism in that denial, considered himself as denouncing it. But all Calvinists believe that they worship the only living and true God. Jefferson, therefore, must have been an Atheist in their view; the same that he declared of them. Just so with the Universalists and me: just so with every sectarian. We are all Atheists to each other, and at the same time we all think that we believe in the only living and true God.

The remaining part of the article complained of, and now under examination, contains a statement of my disbelief in the miracles, and the christian doctrine of the resurrection of the dead. There is no ground of complaint against the manner, the objections urged must be to the matter, and doctrines of this article. There is no violence, no levity, no coarseness. All is moderation; all is sincerity. Now, an attack upon a profession of belief in the doctrines of christianity, I contend, is not blasphemy, within the Statute. The Statute defines in what blasphemy shall consist. The blasphemy must be "wilfully denying God, cursing, or contumeliously reproaching God, his creation, government, and final judging of the world,

cursing, or reproaching Jesus Christ, or the Holy Ghost, cursing; or contumeliously reproaching the Holy Scriptures, by exposing them, or any part of them, to contempt and ridicule." And here again the distinction which I before noticed, between denial and disbelief, should be attended to. Expressing a disbelief in the miracles, and in the christian doctrine of the resurrection, is none of these things described in the Statute. It is not denying God. It is not cursing, nor contumeliously reproaching God, his creation, government, or final judging of the world; for if professing a disbelief in the resurrection, be denying God's final judging of the world, it is not a contumeliously reproaching that final judging of the world. It is not a cursing, or reproaching Jesus Christ, or the Holy Ghost. It is not a cursing, nor contumeliously reproaching the Holy Scriptures, by exposing them, or any part of them, to contempt and ridicule. If the doctrine advanced, or disbelief professed by me, be contrary to the doctrines and belief contained in the Scriptures, yet there is no cursing, nor contumeliously reproaching any person, or thing, as is required to bring a case within the Statute against blasphemy. A wilful denial of God is within the Statute. But in all other cases, there must be more than a denial, there must be cursing, or contumeliously reproaching of the persons, or things described in the law, to bring a case within the purview, and operation of the Statute.

It cannot be contended that, because doctrines are disbelieved, which the Court may believe to be contained in the Scriptures, therefore, the Holy Scriptures are exposed to contempt and ridicule, and the Statute against blasphemy, is violated. This would be putting an enormous strain upon this penal Statute, and the consequences would be in the highest degree alarming. No man would be safe whose opinions in religion might be at variance with those who might happen at the time, to occupy the seats of the Court. What chance would a Unitarian stand for an acquittal, with an orthodox Court and Jury? If such a doctrine be sound, the orthodox Court and Jury would be bound by their oaths and consciences, to convict the Unitarian, who should profess his belief, of blasphemy; for the Orthodox do not consider the Unitarian doctrines to be the doctrine of the Scriptures. And if maintaining a doctrine contrary to the doctrine of the Scriptures, be an offence within the Statute, it is impossible that a Unitarian maintaining his sincere opinions could escape a conviction for blasphemy, when tried by an orthodox Court and Jury. In the same way, and upon the same principles, the orthodox believer, maintaining his sincere opinions, would be in danger of conviction of blasphemy, by a Unitarian Court and Jury; for the Unitarians hold that the Orthodox faith is not the Scripture faith delivered to the Saints.

Thus the Trinitarians in possession of the Judiciary, might convict the Unitarian of blasphemy, and the Unitarians in turn, when they should hold the Judicial power, might retort upon their adversaries. And one sect after another, of the hundreds and perhaps thousands into which Christians are divided, might tyrannize over their opponents, and convict them of blasphemy, and all this under the same statute. That which might be considered the true doctrine one day, would be the next adjudged blasphemy, according to the changing success of various religious parties, obtaining one after another, the political power of the State, and the means of oppressing their adversaries. The doctrine that expresses an opinion, that a disbelief of what the Court and Jury may consider the true Scripture faith, is exposing the Holy Scriptures to contempt and ridicule, and is therefore blasphemy, leads inevitably to the alarming conclusion, that every expression of disbelief in the prevailing religious opinion is blasphemy. This would destroy all freedom of conscience, and render the minority the slaves, or victims of, the majority, in a matter, in which every man feels it is his right and duty, to bear witness of the faith that is in him.

For the purpose of the argument, let us for a moment admit the position to be correct, that an expression of disbelief in what the Court and Jury may consider to be the Scripture doctrine, is exposing the Holy Scriptures to contempt and ridicule, and consequently is blasphemy by the Statute. Let us now suppose the Court and Jury composed of Roman Catholics, and a Protestant arraigned before them, and on trial, for denying the real presence, the actual mysterious existence of the body and blood of Jesus Christ, in the Holy Sacrifice of the Mass, of the Roman Catholic Church. Must not a pious Catholic Jury, according to his doctrine, following the dictates of their consciences, and the obligations of their oaths, convict the Protestant of blasphemy? The Catholics in this country, were the earliest proclaimers of the principles of universal toleration, and I am strongly of opinion that they would go as far as any Christians in the United States, in defence of the cause of religious freedom. But they could not in this case avoid convicting the Protestant; for he has denied and contemned what in their opinion, is a truth expressed in the most plain, and clear manner in the Holy Scriptures. Carry this matter a little farther, and by the same kind of reasoning, by which it is attempted to bring my case within the statute, every prevailing denomination having the Court and Jury of their persuasion, may oppress, persecute, convict of blasphemy, and condemn to the dungeon, the pillory, and the gallows, all who dare to differ from them in opinion.

Do not the Unitarians accuse the Orthodox of blaspheming

God? What says Mr. Jefferson, a zealous Unitarian, who expresses in one of his latest letters, the hope, that every young man in the United States will die a Unitarian? What said this Republican Patriot, almost with his last breath? In the letter, which has been before referred to, he accuses Calvin of "blaspheming" God. Blasphemy is the word he uses. What says Dr. Channing? He accuses the Orthodox of "calumniating" God. Calumniating is the word used by this distinguished divine, which is the same thing as "contumeliously reproaching," the words in the Statute against Blasphemy. The following is an extract from Dr. Channing's Sermon preached at New York, December 7, 1826.

'Suppose then, that a teacher should come among you, and should tell you, that the Creator, in order to pardon his own children, had erected a gallows in the centre of the universe, and had publicly executed upon it, in room of the offenders, an Infinite Being, the partaker of his own Supreme Divinity; suppose him to declare, that this execution was appointed, as a most conspicuous and terrible manifestation of God's justice and wrath, and of the infinite wo denounced by his law; and suppose him to add that all beings in Heaven and earth are required to fix their eyes on this fearful sight, as the most powerful enforcement of obedience and virtue. Would you not tell him, that he CALUMNIATED his maker?' Dr. Channing's Discourses, Reviews, &c., pp. 423, 424. This passage is also found in Professor Stuart's Letter, p. 36.

In the above extract, Dr. Channing charges the preachers of the doctrine of atonement, with "calumniating" God. If this be correct, they are guilty of blasphemy, by the Statute on which I am indicted. Suppose the eloquent Professor Stuart, the author of the noble letter on Religious Liberty, to be indicted for this offence, for preaching the doctrine of the atonement, handed down to him by his Pilgrim Fathers, and the author of this Sermon to be his Judge. Must he not be convicted for calumniating God by that Judge? Calumniating God is contumeliously reproaching God, and this is the very offence described in the Statute. Again, suppose the learned author of this Sermon to be indicted for blasphemy for denying the doctrine of atonement, and Professor Stuart to be the Judge. All his sincerity and learning could not save him, if professing a disbelief of what the Court might deem the doctrine of the Holy Scriptures, be an offence against the Statute. There seems to be a dilemma here, from which it is difficult to escape. Either Dr. Channing is right, or he is wrong. If he is right, then the preachers of the doctrine of the atonement are in peril of this law. If he is wrong, then he is in peril himself, for deaying and attacking the doctrine.

The Statute on which I am indicted is a penal Statute and

must be construed strictly. A case must be clearly, and without putting a strain upon the words, brought within the letter of a penal statute, to be within its operation. It is not sufficient that the acts proved, are considered to be as bad, or even worse in their tendency, than those prohibited in the law. They must be the very acts described and prohibited by the language of the Statute, giving that language not an enlarged construction to embrace the case, but a strict limited construction in favor of the accused. In every case of a prosecution founded on a penal Statute, the question is, whether the offence charged, be the precise offence described in the written law, and if the defendant's case be not within the very letter, he must be acquitted. This position is sustained, by the mild and humane principles of criminal jurisprudence, by which our Courts profess to be guided. It is sustained by the highest authorities in the law, I refer to the authority of the great names of Bacon and Blackstone. Lord Bacon thus informs us in his *MAXIMS OF THE LAW*.

'As it is a rule that penal statutes shall not be taken by equity, and the statute of 1 Ed. VI. enacts that those that are attainted for stealing of horses shall not have their clergy, the judges conceived, that this did not extend to him that should steal but one horse, and therefore procured a new act for it in 2 Ed. VI. cap. 33. And they had reason for it, as I take the law; for it is not like the case upon the statute of *Glocest.* that gives the action of waste against him that holds *pro termino vite vel annorum*. It is true, that if a man holds but for a year he is within the statute; for it is to be noted, that penal statutes are taken strictly and literally only in the point of defining and setting down the fact and the punishment, and in those clauses that do concern them, and not generally in words that are but circumstances and conveyance in the putting of the case, and to see the diversity; for if the law be, that for such an offence a man shall lose his right hand, and the offender hath had his right hand before cut off in the wars, he shall not lose his left hand, but the crime shall rather pass without the punishment which the law assigned, than the letter of the law should be extended; but if the statute of 1 Ed. VI. had been, that he that should steal one horse should be ousted of his clergy, then there had been no question at all, but if a man had stolen more horses than one, but that he had been within the statute, *quia omne majus continet in se minus*.'

It appears that this doctrine was anciently pushed to the extreme extent of causing the acquittal of a person, who had stolen one horse, and was indicted on the Statute relating to the stealing of horses. In modern times a more rational construction has been given in a similar case, and a party who had stolen one bank note, was holden to have violated the Statute, prohibiting the stealing of bank notes. Sir William Blackstone fully confirms, in his Commentaries, the principles proclaimed by Bacon.

'PENAL statutes must be construed strictly. Thus the statute 1 Edw. VI, c. 12, having enacted that those who are convicted of stealing *horses* should not have the benefit of the clergy, the judges conceived that this did not extend to him that should steal but one *horse*, and therefore procured a new act for that purpose in the following year. And to come nearer our own times, by the Statute 14 Geo. II, c. 6, stealing sheep, or *other cattle*, was made felony without benefit of clergy. But these general words, "or other cattle," being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And therefore, in the next sessions, it was found necessary to make another Statute, 15 Geo. II, c. 34, extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves and lambs by name.'

'STATUTES against frauds are to be liberally and beneficially expounded. This may seem a contradiction to the last rule; most statutes against frauds being in their consequences penal. But this difference is here to be taken; where the statute acts upon the offender, and inflicts a penalty, as the pillory, or a fine, it is then to be taken strictly: but when the statute acts upon the offence, by setting aside the fraudulent transaction, here it is to be construed liberally.' 1 *Blackstone's Commentaries*, p. 87, *et seq.*

This maxim has been adopted and practised upon by this Court in the following cases:

Melody	v. Reab	4 Massachusetts Reports,	473.
Commonwealth	v. Macomber	3 ditto	257.
Same	v. Barlow	4 ditto	439.

It will be found that all these authorities are directly in point, and are as clear as words can possibly express.

How strong is the above illustration of the maxim; that a penal Statute is to be construed strictly, in the case, where precisely opposite constructions were given, to the same words in the same Statute, according as the object of the suit, was to operate on the offence, or upon the offender. In the one case, the liberal construction was applied, when the object of the suit was to operate on the offence, and recover back the money lost at gaming. In the other, when the object was to operate on the offender, and punish him, the strict construction was applied. 1 *Blackstone's Commentaries* p. 88, Note 20, who quotes 2d *Blackstone's Reports* 1226.

Apply these principles of construction to the articles complained of in the present indictment, and not one of them will be found within the letter of the Statute against Blasphemy.

And if the articles complained of do not bring me within the strict letter of the law, the judgment should be arrested.—I have now finished the remarks which I intended to make on this branch of the subject, having established to my mind, that the facts in evidence do not constitute any offence within the terms of the Statute.

But be this as it may, I have another and much more elaborate inquiry before me; and that is, whether this Statute against Blasphemy be a constitutional law.

[Here the Court granted me a respite of about ten minutes. In the mean time I presented each of the Judges and the Attorney General with a copy of my printed Speech at the November term, 1834.]

The Legislature has attempted to legislate on a subject too vast for their understandings to comprehend, and altogether, beyond human jurisdiction. It is a law upon an infinite subject, and therefore beyond the grasp of finite faculties. It seems either the height of human presumption, or the lowest degree of human folly, for a legislature to attempt to make laws on a subject immeasurably beyond their reach. No human intellect can comprehend, no human language define it. Man adores, but he cannot find out God. Doth not the Scripture say "canst thou by searching find out God; canst thou find out the Almighty unto perfection?" Even the ideas of God, which the mind of man can conceive, he cannot express by words.

I now proceed to the consideration of the second cause why the judgment should be arrested; and that is, because,

2. The Statute is unconstitutional.

The following is the Second Article of the Bill of Rights.

'It is the right, as well as the duty, of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience: *or for his religious profession, or sentiments*; provided he doth not disturb the public peace, or obstruct others in their religious worship.'

There are three propositions in this Article. The first declares that it is the right and duty of men to worship the Supreme Being. This is mere matter of opinion: there is no compulsion in it. The second contains a declaration that no subject shall be hurt, molested, or restrained, in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience. This contains unrestrained liberty of conscience. The third contains a declaration, that no subject shall be hurt, molested or restrained, in his person, liberty or estate, for his *religious profession or sentiments*. The only restrictions, imposed upon the full and perfect enjoyment of these rights, are, that the public peace shall not be disturbed, nor others obstructed in their religious worship. Is not this a correct statement of the contents of this Article? How shall this article be construed? It is

not to be looked at and peered over, by the narrow optics of a technical drudge and mere hack in the trade of the law, hunting after syllables in a penal statute. It should be viewed with the eye of philosophy, and in the clear, broad light, in which Statesmen of expanded minds, are accustomed to examine subjects of the greatest interest to mankind. This is a great Ordinance of a People, then, raising the edifice of freedom, while they were achieving a Revolution, which trampled in the dust the chains of superstitious bondage, in which mankind had been bound for countless ages. They were rearing the Temple of Freedom, and one of the main pillars is, the prohibition of all penal laws and penal prosecutions on the subject of religion. This was manifestly the object of the people, and therefore this provision of the Bill of Rights should receive the most liberal, and enlarged construction, that which philosophy and philanthropy approve, and which best promotes the just and enlightened objects of the framers of the Constitution.

This sacred instrument is not to be tampered with, nor are the objects of the people to be defeated, by the sharp quibbles of legal construction, annulling its glorious provisions. It was a maxim of Jefferson, that "error of opinion may be safely tolerated, when reason is left free to combat it." This was the sentiment of a christian philosopher, a principle that may be claimed by every wise and good man, and it was the sentiment of the wise framers of the Constitution of this Commonwealth. No narrow, illiberal, astute construction of this article of the Bill of Rights, will be tolerated by the country, or the age in which we live. The words are plain, and the language is explicit, which proclaims the principle of universal toleration. If there were a doubt, the most liberal construction should be adopted, for that is in accordance with philosophy, with philanthropy, with the genius of our institutions, and the character of our people. What did the people, who sent the Delegates to the Convention, desire? Did they not expect a Charter of freedom, at their hands? They were not disappointed, and from the ruins of Monarchy in Massachusetts a Republican Government rose to the admiration of mankind to sustain in politics and religion, the undeniable rights of man. What did the authors of the Constitution intend to secure in this provision? It was freedom, perfect freedom in the maintenance of opinions of religion, unrestrained by any other than these restrictions, that the public peace is not to be disturbed, nor the freedom of religious worship of others, obstructed. Let us examine the words a little closer.

What is the meaning of the words "religious profession or sentiments?" Do they not mean profession or sentiments in or respecting religion? Can any intelligent mind deny, that this

is the fair, true and only meaning of these words? The Bill of Rights then protects the subject from being hurt, molested or restrained in his person, liberty or estate, for his religious profession or sentiments; or his sentiments in or respecting religion, whatever they may be. Religious sentiments are those sentiments which bind the mind and conscience to adhere to whatever the individual believes to be right, just and true, be it whatsoever it may: for the term comes from *re* again, and *ligo* to bind, to *bind anew*.

Are we then to be told that this Article only protects those, holding what, in the opinion of the Court and Jury, "are religious profession or sentiments," and that my "profession or sentiments" are not religious, but irreligious? I was so told at the last trial but one by the Attorney General, who, at that time, heaped upon me every species of personal abuse, as I conceived, which our language could furnish. The Judge who presided at that trial will remember that I bore all this virulence and injustice calmly; nor offered a return of any portion of it. I could not however avoid comparing the practice of the Attorney with the rules prescribed by his christian master. But, to return. Is a man's sentiments to have no protection, because, forsooth, in the opinion of the Court, they are not religious, but irreligious? Would not this be a mere quibble, discreditable to the mind and heart which should approve of it? It would destroy the whole object of the provision in the Bill of Rights, and in an instant annihilate the bulwark of liberty, which our fathers intended should stand for ages, a monument of their wisdom and virtue, and the protection of the rights of their children to the latest generation. Such a construction would annul the Bill of Rights, for it would leave it in the power of the Legislature to punish by penal laws, and in the power of the Courts to harass by penal prosecutions, all who might maintain any profession or sentiments in or respecting religion, which the Legislature and the Courts might choose to consider not religious, but irreligious profession or sentiments. Under such a construction of that great Charter of our liberties, won as was the English Magna Charta by the sword, the people of Massachusetts would be no better protected against persecution on account of religion, than the people of Spain were under the Inquisition. Such a construction would leave it in the power of the Legislature and the Courts, to say what were, and what were not, religious profession or sentiments, and thus let in the very flood of mischiefs which the Bill of Rights was made to keep out. An orthodox Legislature, might consider the Unitarian or Universalist as not of "religious profession or sentiments," and a Unitarian or Universalist Legislature, might consider the Orthodox, as not of "religious profession or senti-

ments."—You see therefore, that such a construction would be a mere quibble, and if sustained, all the barriers of toleration, all the safeguards of the Constitution, which is a law to the Legislature and the Courts, would be at once swept away and destroyed. None would be protected but those, whose "religious profession or sentiments," might be in accordance with those of the Legislatures and Courts. Besides it would be contrary to the Spirit of the same Constitution; in the 16th article of which, the liberty of the press is distinctly asserted, which shows conclusively to my mind that such a construction cannot reasonably or consistently be given.

If none are to enjoy protection from being hurt, molested or restrained in person, liberty or estate, except those, whom the Legislature and the Courts, may consider to be of "religious profession or sentiments," the provision in the Bill of Rights is altogether superfluous, for those who are of "religious profession or sentiments," according to the opinion of the Legislature and the Courts, never can be in danger of being hurt, molested or restrained, in person, liberty or estate, for their "religious profession or sentiments," and therefore need no protection. They need no shield against religious persecution, for they are already guarded by the shield of the Government. They do not punish, even in Spain, those who hold to the "religious profession or sentiments" of the Government and people. They only burn, in the Inquisition, the heretics, those who were not of the "religious profession or sentiments," which the Government approved. It is not for those who hold the "religious profession or sentiments" of the Government and the people, that universal toleration is provided in the Bill of Rights, for they are invulnerable. It is for those, who hold a profession and sentiments which are not considered by the Government and people as religious, for those alone are in danger of persecution. This Bill of Rights is a shield for the weak, not a weapon of persecution for the hand of the strong. It is intended for those who alone need protection—those who profess unpopular sentiments respecting religion.

The Constitution intended to protect all of every belief and unbelief respecting religion. The framers of the Constitution did not intend to have any Inquisition here. They did not intend their Legislature and Courts should have any power to interfere, in what they have no right to interfere, in matters of belief or unbelief respecting religion. They intended to have no heresy laws, and no heresy prosecutions, and therefore abolished and prohibited all penal laws and penal prosecutions on the subject of religion in this Commonwealth. Who shall say what are religious profession or sentiments? Among Catholics, the Protestant religion has been holden to be heresy. The

same condemnation, upon the Roman Catholic, is pronounced by Protestants. Do not the Calvinists and Unitarians mutually accuse each other of not maintaining religious sentiments? The moment the toleration principle, which we have been examining shall be quibbled away, the most glorious provision of the Bill of Rights will vanish, and in every penal prosecution respecting religion, the question must be settled, what constitutes religious profession or sentiments. One Court will set up one standard of faith, and another Court a different standard,—thus our Constitution will be subverted, and the rights of conscience forever prostrated. To this construction an Inquisition would be far preferable. An Inquisition would have many advantages that would not be found in our Courts, if they are to say what are and what are not religious sentiments. The rule of faith and mode of worship with us would be subject to continual fluctuations and changes, as different religious sects were dominant in power, and no man would know what to believe to exempt him from persecution. What are religious sentiments to day may be irreligious sentiments to-morrow, and vice versa. An Inquisition would at least preserve uniformity in their persecutions.

Here I wish to enter my most solemn protest against this Court, or any other undertaking to decide between a man and his God; to undertake to say, for any one but themselves, what are or what are not religious sentiments. I deny the right, I deny the authority of any human tribunal to interfere, or to undertake to decide in this matter. My religion is my own. And let no man judge another man's servant; to his own master he standeth or falleth. Hence I do not hold myself amenable to any human authority on account of my religion. It is an inalienable right; and can only be parted with with life. If any man, or any human authority ever had the power to establish a uniformity of faith, it was Constantine the Great. But he failed in the attempt, and so has every attempt failed since. Men would not conform, neither would they abstain from avowing contrary sentiments to the established creed, although banishment and death were the dreadful consequences.

Religious sentiments:—All men of any cultivation, cherish religious sentiments, clear or confused, according to their various degrees of understanding, habits of reflection and means of knowledge; and the framers of the Constitution intended to protect from penal laws and prosecutions those of every varying religious profession, and all of every sort of sentiments respecting religion. They intended to protect all of every belief, and of every unbelief, relating to religion.

There is an established rule of construction of all written laws, from the construction of a Statute, on the most unimpor-

tant subject, up to the Constitution, which may assist our enquiries. It is thus stated with admirable clearness by one of our American Sages, in the ninth volume of his Digest of American Law, p. 578. Dane's Abridgment.

'With regard to the different parts of a statute, there is one general rule of construction; that is, the construction of each and every part must be made on a full view of the whole statute; and every part must have force and effect, if possible; for the meaning of every part is found in its connexions with the other parts; and it cannot be believed the legislature intended any part of the statute should be without a meaning, or without force or effect. These rules are not peculiar to statutes, but hold in regard to wills, deeds, and all instruments where the question is, What did the maker mean? *Each ought to be so construed, if it can be, as to prevent any clause, sentence, or word being superfluous, void, or insignificant*; for this obvious reason, no maker of either can be supposed to mean that any part, clause, or word, shall be insignificant, superfluous, or void.'

Every part of a Statute shall have effect, and each part shall, if possible, be so construed, as to give to the whole an effect, and to prevent the rendering any phrase or word ineffectual, superfluous or void. Such is the rule of construction, to be applied to the most inconsiderable Statute, passed in the most hasty manner by the Legislature.

Such is the respect paid to the authority of the most unimportant laws, that it shall not be supposed, that the Legislature has used words without meaning, and therefore a meaning shall if possible be given to all the words of a law. With far greater force does this rule of construction apply to the Constitution, a Supreme law of the sovereign people to the Legislature and the Judiciary.

Our revolutionary fathers determined to limit the legislation, and judicial power of this State by a written Constitution. They intended that there should be in Massachusetts no political omnipotence, except the sovereign power of the people. They therefore established this Constitution of Government, and every word of the Ordinance of the people is to have its full effect, for every word of the Bill of Rights, is the deliberate expression of the will of the people. Apply this principle of construction, that every word is to have its full effect, to the clause in the second article of the Bill of Rights. The words of the clause are as follows:—

'And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.'

In the first place all of every description of persons who

worship God are protected in the most ample manner. Does the clause stop there? No, the Bill of Rights proceeds further. After that come these words, "or for his religious profession or sentiments." This extends the Constitutional safeguard, even to those, if there be such on the face of the earth, who do not worship God. These latter words are separated from the former phrase in the clause, by the disjunctive conjunction, "or," which is used to distinguish a clear separation from, or an "opposition of meaning" to, the class of persons before described. If this be not so, these words "or for his religious profession or sentiments," are without any meaning, and altogether superfluous. All who worship God according to the dictates of their own consciences, are first protected. Then, to remove all doubt, and to guard against vile quibbling in order to destroy this provision of the constitution, even those who do not worship God, if there be any such, are also protected. These words, "or for his religious profession or sentiments," must have the effect to throw the Constitutional shield of toleration over all sorts of unbelief, or else they are a dead letter, and must be considered, to have been used, by the framers of the Constitution, without a meaning. This is not to be supposed, unless one of the best rules of construing laws, be violated in a case where it should be most regarded. No one can believe or dare declare that the words, "or for his religious profession or sentiments," have no meaning, and are void. If they have a meaning, they extend the principle of toleration, as it should be extended, in every Constitution of a people, to the protection, against penal laws, and penal prosecutions, of all, whatever may be their profession or sentiments respecting religion.

It may be contended, that the Constitution permits a man to believe what he pleases in relation to religion, but does not protect a party, in promulgating and maintaining his sentiments. Such a distinction is more nice than wise. It refines away the Constitution, and renders it a mere cobweb, not a substantial bulwark of the liberties of the people. What sort of toleration would this be? What sort of a protection would such a construction of the Bill of Rights secure? Such a construction renders the Constitution a mere mockery; for a man does not need the Constitution to protect him in the enjoyment of his secret unexpressed opinions. In the countries of the Inquisition, even in its dungeons, the enjoyment of secret opinions, cannot be restrained; nothing short of omnipotence can prevent the mind from forming and enjoying its own opinions; and if such a construction can be sustained, we are no better secured in this matter, in Massachusetts, than are the subjects of the most absolute government on earth. A person needs

protection for his avowed, not his concealed, opinions. And avowed opinions or sentiments in or respecting religion, are those alone which need protection, and which are protected by the Constitution. The Constitution will not admit of an absurdity like this, that the maintenance of one's profession or sentiments in religion is not within the protecting clause. Observe, not only the clause itself, but also the last word in the clause, is connected to the foregoing by the disjunctive conjunction, *or*, which, says Murray's Grammar, vol. 1, p. 123, "serves, not only to connect and continue the sentence, but also to express opposition of meaning in different degrees." A man's sentiments therefore, whatever they are, concerning or about religion, and I should say concerning or about any, and every other subject, as well as religion, is intended to be protected by this constitution. If not so, the words "or sentiments," have no business there. Or if we say it means "or for his religious profession or [religious] sentiments," admitting the adjective "religious" to qualify the word "sentiments," as well as the word "profession," which is giving the word "sentiments" the most extended meaning that can be given to it, the conclusion will still be the same in relation to the present case.

The Constitution positively declares, that no subject shall be hurt, molested or restrained, in his person, liberty, or estate, on account of his religious profession or sentiments, that is, on account of the religious sentiments which he professes and avows. His religious sentiments could not be known if he did not avow them. How then can it mean his secret sentiments? The Constitution sanctions no such absurdity. Its positive declaration is, that no person shall be hurt, molested or restrained, for his opinions or sentiments on religious matters. Can he be hurt, molested, or restrained, for opinions which are kept secret? Is that the meaning of the Constitution? Surely not. A person is not to be hurt, molested or restrained, for promulgating his sentiments relating to religion in any way he pleases, provided only, "he doth not disturb the public peace, or obstruct others in their religious worship." If a person has a right to hold opinions, he has a right to make them known.

"To speak his thoughts is every freeman's right."

On this point let me read to you, the orthodox doctrine of orthodox Christians on the subject of religious freedom. It is the true doctrine, the doctrine of liberty of conscience guaranteed by the Constitution. The opinions of the Orthodox, on this subject, is thus proclaimed by their great Champion in this State, Professor Stuart.

* * * "We mean that the Mahometan even, and the Jew, and the Deist, as well as the Christian, should have the liberty

of worshipping in his own way among us, so long as they demean themselves peaceably, and do not invade the rights of others. We know of no exception to participation in civil and social rights, and the right of worshipping in our own way, or of even not worshipping in any way, under a government that is free in the sense that we would have it; and all this without any abridgment of the rights of citizens, without any civil disabilities."

"We not only believe that all men should be left free to form their religious opinions, without any civil penalties or disabilities, but we maintain most fully, that *when the religious sentiments of any one are formed, he has a right to propagate them, to defend them, and to support them, by his efforts, his pen, his property, or his influence.*

"In all this we understand of course, that in so doing he does not slander or abuse his neighbor, nor deny him any civil or social right as a member of the community, nor hinder him in the lawful exercise of it. Of the former of these faults the civil law justly may take cognizance. Against the latter, the law of love and of doing as we would be done by, protests.

"We believe most fully, that men have a right to propagate their religious sentiments, if they confine themselves to argument, and persuasion, and do not appeal to abuse, which is a crime in the eye of the civil law, it being manifestly against the peace of the community. We are well aware, indeed, of the mischiefs which may result from a free right to propagate religious, or rather *irreligious* sentiments of any kind.

* * * But dreadful as it is, we regard as a still greater evil, the power of civil government, or of any ecclesiastical tribunal, to suppress the publication of books at its option. To-day it may choose, as Frederick the Great did, and the French Directory after him, to circulate widely Voltaire, and D'Alembert, and Rousseau; or to-morrow it may spread wide the poison of some heresy lurking under a Christian name; while, at the same time, it inhibits all antidotes to these tremendous evils. The liberty of the press, *the unreserved liberty of it*, is in our view fundamental to religious liberty. If the press be, as it doubtless sometimes is, a most terrible instrument of doing evil; it is also one of the most efficient of all instruments in doing good. We would forever leave it open and free to do good; and if the liberty to do evil must come along with this, (and we do not see how it is possible to prevent it,) why then the friends of truth must trust to argument, to reason, to conscience, and to God, for triumph over the powers of darkness: And this they may do, without peril to the cause in which they are engaged.

"If I have not liberty to propagate my religious sentiments,
* * * then I am not free. Liberty in its highest and most precious sense is denied me.' *Stuart's Letter*, pages 14 and 17 inclusive.

Professor Stuart says, "That the friends of truth must trust to arguments, to reason, to conscience, and to God." He does not say the whipping post, the pillory and the gallows. He laments with the strong feelings of a pious man the mischiefs resulting from propagating what he considers irreligious

sentiments; but he holds like a wise man, that the evil, great as it is, is much less, than would be the consequences of an attempt to suppress by law, the propagation of sentiments which the Legislature may consider irreligious. We regard, as a great evil in any country, the power of the civil authorities to suppress books on religion. The unrestrained liberty of the press in promulgating sentiments respecting religion, we hold to be a vital principle of liberty, and essential to the support even of religion itself. We view with horror the proceedings of those Governments, where nothing is allowed to be published, that does not conform to the established creed. The liberty of the press is essential to the preservation of religion itself. It is a fundamental principle of religious liberty. Without it, there is no safety; for though a Christian Legislature might now proscribe none but infidel books; yet, you might have an Infidel Legislature, which would proscribe all but infidel books, and suppress religion by law, on the same principle by which our Legislature undertakes to suppress irreligion or infidelity by law. A wise man will consider what may happen, and extend his speculations beyond the smoke of his own chimney. Such is the philosophic view which Professor Stuart has taken of this question. He sees how power may shift from one sect to another; for he himself belongs to a sect, that has not now the predominant political power it once possessed in this Commonwealth. He looks into history and draws instruction from its lessons.

We should profit by these lessons. If you condemn a great heresy to-day, by a prosecution and judgment in a court of law, you may condemn a less heresy, in the same way, to-morrow, and so on, until you find Judges and Jurors constituting an Inquisition upon men's belief, in all matters of religious concernment, and every deviation from the established creed rendered punishable. To prevent this, the framers of the constitution introduced the article respecting the freedom of the press under which I contend that I have a strict legal right to promulgate my opinions of religion, or on any other subject; and that this right is guaranteed to me by the 16th Article of the bill of rights which is in these words. "The liberty of the press is essential to the security of freedom in a State—it ought not therefore to be restrained in this Commonwealth."

The plain and simple truth laid down in the Constitution, is, that the civil tribunals have no power, no right to enquire into or punish any errors of opinion in relation to religion. Were it not so, the ruling power might put down Christianity itself, if ever Christianity should happen to be in the minority here, as it may be, and as it has been under other governments. These are the principles which Professor Stuart holds, and he

established his argument by the second article of the Bill of Rights. He does not mean to countenance a law to crush the deist or infidel, to-day, which to-morrow may be used to crush himself. His sentiments are as beautifully expressed, as his reasoning is unanswerable. He plants himself on the Constitution, which throws its protection alike over all sentiments relating to religion, and leaves all matters of belief, things between a man and his God, or his own conscience, which is God within him, to the decision of the only proper tribunal, that which alone knows the heart.

But another and the third cause of arrest, is,

3. The Statute is contrary to the Laws of Congress.

The Constitution and laws of the United States, so far from sustaining this Statute, against Blasphemy, actually destroy its validity. By the Constitution and laws of the United States, persons of every religious faith, may be admitted as citizens. The oppressed of every political sentiment, and the persecuted of every religious faith, may here find a refuge, in this land of civil and religious liberty. This Statute of Blasphemy is opposed by the Constitution and the laws of Congress on the subject of naturalization, and therefore is void; for no Jew, no Gentile, none but a Christian, and a believer in the faith which this Statute establishes can live in safety under this Statute. None but a Christian, and a Trinitarian Christian, can enjoy his religion under this law. A Court composed wholly of Trinitarians, who believe that Christ is God, the Holy Ghost is God, of equal power and glory with the Father, would consider a denial of Christ, or a denial of the Holy Ghost, equally a denial of God as a denial of God the Father, and of course Blasphemy according to the Statute; hence no Deist, Jew, Mahometan, or even Unitarian Christian can possibly be safe under it. Yet all these, or even Pagans, may become naturalized citizens. The Statute is therefore now attacked here on the ground that it conflicts with the naturalization laws of the United States, and restrains the rights and privileges which these laws secure to naturalized citizens of every religious profession or sentiment.

The Constitution of the United States declares that Congress shall have power to establish a uniform system of Naturalization. Congress have done so, and under the Naturalization laws, citizens of other countries of every religion, and of no religion, are admitted to become citizens of the United States. The Pagan, the Mahometan, the Jew, the Gentoo, the unbeliever, are all entitled to be admitted to the rights of citizenship. No qualification is required, but a good moral character, as the political orthodoxy of this country, and of attachment to the principles of the Constitution of the United States. If

then, any man be admitted a citizen of the United States, under this law, is he not entitled to bring with him and profess his religious sentiments? Has he not a right to propagate his opinions, as much as others who differ from him have to disseminate theirs? Do we mean to entrap men into becoming citizens, under the Constitution of the United States, which proclaims the principle of universal toleration, and when they come to reside within a particular State, shall we place them in the pillory, or on the gallows, for professing their sentiments relating to religion? Suppose a Mahometan be naturalized. The Constitution asks nothing about his religion. He is admitted a free citizen of the United States, with all the legal rights of all other citizens. He then erects his Mosque, and preaches, there is but one God, and Mahomet is his Prophet, and he denounces the christian religion, as the christians denounce his. Has he not a right to do so under the Constitution and laws of the United States, and shall a law of this State hinder, molest, or restrain him? The Jew establishes his Synagogue, the Mahometan erects his Mosque, the Chinese sets up his Pagoda, the Pundit rears his Temple, and each proclaims his God, and denies the God of every other religion. What are the rights of Christians? Are they to be tongue-tied and muzzled? Cannot they deny the God of the heathen? Cannot they ridicule their religion, and expose its worshippers to contempt? But if we can assail these opinions, deny the false Gods, reproach their prophets, as impostors or enthusiasts; and pronounce their books of religion the legend of falsehood, they must have a corresponding right under our Constitution to assail and impeach the christian religion in turn. The Mahometan asserts the truth of the Koran, and denies the Bible. The Jew contends for the Old Testament as the only Holy Word of God, and denounces the New, as the work of men. Surely Christians have a right to expose the folly of his opinions, and ridicule his ceremonials, and sacrifices, and if so, he must have a right to oppose with equal zeal the Christian baptism and sacraments. The moment we attempt to trammel others, we destroy our own rights to expose the errors of others and to maintain the truth of our own sentiments respecting religion. If it be not so, then is the Constitution a snare, instead of a protection. It invites the stranger to come here, to become a citizen, and yet he is to be exposed to punishment, if he dare to promulgate his opinions in matters of religion. Do the Christians generally in their writings, or in their pulpits, spare the Jews? Is it right that we should be deprived of the power of condemning any false religion, or the worshippers of false Gods? But if we claim the right to proclaim our sentiments, we must concede the same right to others, who are equally citizens with ourselves. We

cannot under our Constitution deny the right of others to maintain their profession and sentiments respecting religion, without renouncing on our part our most precious privileges, for they must have the same right to propagate their opinions, which we claim for ourselves.

How would you proceed in the case of a Jew, who should be arraigned for Blasphemy? The Jew believes that the Messiah has not yet come, yet he cannot preach that doctrine without denying the authenticity of the New Testament, and thereby expose it to contempt, and of course of violating this Act against Blasphemy. The Constitution guards against all such absurdities as these, by protecting all believers and unbelievers alike.

I might extend these illustrations without end; showing the folly of any attempt to legislate upon men's faith in religious matters, for the theme is inexhaustible. Enough however, has been said on this head, to show conclusively, as I think, that you cannot sustain the Constitution of the United States and the State of Massachusetts, and this Statute together. One or the other must yield, and it becomes a most important matter for you to determine, whether you will be governed by the Constitution of the United States and of Massachusetts, or by this Statute in direct violation of both these Constitutions.

4. I might now proceed to the fourth cause assigned for an arrest of judgment, which is, That it is not averred in the indictment that the publications complained of were falsely or maliciously made. But I have already taken up so much time in this argument that I do not propose to enlarge upon this subject; but shall leave it with the Court who will doubtless give it its proper weight.

5 and 6. Nor will I weary your Honors with further remarks as to the other alleged imperfections in the indictment, which constitute my fifth and sixth reasons for an arrest of judgment. The fact is, I am willing to stand or fall on broader ground than mere verbal technicalities. I stand on a ground as broad as space, and as firm as the rock of ages; to wit, on the right of conscience, together with the privilege of the freedom of Speech and the liberty of the press; trusting at the same time in the validity of the Constitution which secures, or was intended to secure, to me and every other citizen, the free exercise and enjoyment of this right, and of those privileges. I shall therefore now close my defence with a single observation; namely, That if I am convicted of the imaginary offence charged against me, there is an end to the privileges intended to be secured by the Constitution—and hereafter no man may presume to speak or publish his sentiments in or concerning religion, if they happen to be different from those entertained by the Legislature and the Court.

[The Attorney General made a speech in reply to the above which occupied about three quarters of an hour. It being now 2 o'clock, the Court adjourned till half past three. I had taken some minutes of Mr. Austin's Speech, and the reader will be able to form some idea of it by what follows, which I give as barely the substance of my reply. For I spake wholly *ex tempore*.]

May it please the Court:—

I did expect to have heard something like an attempt to answer the arguments which I have advanced in my defence. That the Attorney General would have at least attempted to show that my reasoning was illogical, or that my arguments were inconclusive. But I heard nothing of the kind. The Attorney, in all that he has said, seems more like "giving up the ship," than like defending the fortress, and his argument, if such it can be called, is almost too puerile to merit a reply. But I still hope, that in case the verdict must be sustained, and the decision must be against me, such reasons will be given, in answer to all my arguments, as will satisfy the whole community that I am wrong, and that the Court and the Attorney General are correct. I wish the Court to decide with due deliberation and circumspection, and make such a report as will do honor to the Bench, the Commonwealth, and the country to which we belong; for I consider that the interests of the Attorney General himself, and even your honors, are as much involved in this case as mine. If it be thought that any possible good can result to the Commonwealth by incarcerating me in a prison, why then let me go. No martyr ever went to the stake more innocently in his own estimation; and perhaps no one ever suffered with more firmness or greater cheerfulness than I can suffer, if such must be my lot. But I do not wish to suffer; and I owe it to the sympathy of my friends to make every possible effort that I honorably can to exonerate myself.

Without attempting to answer my arguments on the subject, the Attorney says I have denied God, and to deny God is blasphemy according to the Statute.

Now if this is what the legislature meant, why is not the Statute so worded? Why does it not say, "Whosoever shall wilfully blaspheme the Holy name of God, by disbelieving, denying, cursing, or contumeliously reproaching God," &c. If the word *disbelieving* had been there, would it have altered its meaning or not? If it would, and no one can say it would not; and if the framers of the Statute meant to include disbelief, as well as denial, why is not the word there? It is not there, and of course unbelief is not in the Statute. It makes no part of the crime of blasphemy according to the Statute.

The Attorney admits that all other subjects may be discussed, if done decently. I say the Constitution says nothing about either decent or indecent discussion; but that the freedom of the press ought not to be restrained in this Commonwealth. But the Attorney denies that this subject, the existence or non-existence of God, can even be discussed, without violating the Statute. This is new doctrine to me. I was not aware that the Constitution, or even the Statute, protected any dogma or doctrine from discussion. And the Attorney has given you no authority for it but his own *ipse dixit*.

The Attorney says, if the facts are not within the law, if I have not violated the Statute, I must be acquitted of course; but he contends that I have been convicted by a Jury, and of course that point is now settled; that it is not even open for consideration. Is it so? Did I not waive the motion for a new trial on the ground that this point is still open for the consideration of the Court? If that verdict was obtained in consequence of the erroneous instructions of the Judge, as I have no doubt it was, then it is a good cause for a new trial, and the Judge himself admitted it. Let the case therefore go to a new Jury, and let that Jury be instructed that, in the opinion of the Court, the words do not amount to a denial of God, and see what the verdict will be then.

The Attorney contends that I have denied the existence of any god whatever. It is not so. I have not even denied the existence of Mr. Whittemore's god, and if I had, it would not have been denying the "god of the statute," for that is evidently a Trinitarian God.

The Attorney says that my God, a belief in whom I express by the word Pantheism, has no intelligence. Here he does not, or will not, understand me. My God embraces all the intelligence in the universe; for he embraces all existence; of course all the wisdom, all the knowledge, all the justice, all of every thing that is good; and evil is only negative, the absence of that which is good. How is it possible that two words so directly opposite in their meaning as Atheism and Pantheism can be considered synonymous terms, as the Attorney has contended? [Here I went into a critical explanation of the two terms, and showed in what sense I considered Pantheism true; and then observed that I felt confident of an acquittal if I could only make myself understood. At this expression the Chief Justice nodded respectfully, and seemingly with assent; but what he meant I should infer from it I cannot say.]

The Attorney seems to think that the law has been too long standing to object now to its unconstitutionality. Besides, he says, it has been, as it were, re-enacted recently in the late revision of the Statute. The long standing of the law amounts

to nothing, any more than the law against witchcraft, which still remains unrepealed. The constitutionality of the law was never before, to my knowledge, called in question. It is therefore a new precedent; now to be settled for the first time; and it is all important to have it settled correctly. I say this law has not been revised nor re-enacted. But in the late revision of the Statute Books, it was left untouched, like some other laws, which have grown up from a barbarous age, of witchcraft memory, and still are suffered to disgrace our system of jurisprudence.

The Attorney General has not, as I conceive, answered, rebutted, or refuted, even so much as one of the points which I have attempted to maintain. He says that the Constitution permits a man to worship; but it does *not* permit a man *not* to worship God. I have not been able to find any such thing in the Constitution, neither has the Attorney pointed you to the clause. But what is the most extraordinary of all, is, he says that an Atheist can have no conscience! To this I will reply in language that he must surely respect [looking him directly in the face] "Judge not, that ye be not judged."

All men of common sense have a conscience. It is the focus where all the rays of light and knowledge meet. A man's conscience, therefore, is the result of all he knows, more or less; it is his moral sense of right and wrong; and hence it depends very much on his education and habits of thinking. The Quaker, for instance, stands wholly upon his conscience, which he considers God, or *light within*; you excuse him from taking an oath, and yet receive his testimony as from a good and competent witness. I stand upon the same ground. This moral sense of right and wrong, or conscience, is God in the understanding; which, if it does not always lead a man to correct conclusions, it will always lead him to do and say what he thinks is right. These are my views of God, of conscience, and of moral truth. But if I must be incarcerated in a prison because there is a *being* [waving the hand towards the Attorney General] who cannot understand me, then, all I can do, is, to submit.

The Attorney has insinuated that I would wish to carry the liberty of the press to any thing and every thing I might choose to print. I say, yes, in relation to religion, and all other general subjects. But if I slander my neighbor, he has a right to a civil action for damages; and I would say exemplary damages should be given him, according to the nature and aggravation of the case. But I do deny the constitutional right of any man, or set of men, to interfere with another man's opinions in relation to general subjects. And if we allow our Courts to say what opinions shall be tolerated, and what must be suppressed, we have a worse than the Inquisition here established

by law; because we have the ecclesiastical and the secular power both in the same tribunal, which they never had in countries where the Inquisition reigned in all its terrors. The subject is by no means exhausted; but believing that enough has been said to enable you to form a correct decision, I may as well close; and shall close, with a single remark. The Jury recommended me to mercy. I feel no consciousness of guilt, and therefore I ask for no mercy. I wish to be acquitted on the broad principle of right, and of justice, or else not acquitted at all. I would not knowingly violate even a bad law; and if I have unfortunately done it, unless the law can be set aside on the ground of its unconstitutionality, I must abide the consequences. But I say, although I believe the law to be altogether unconstitutional, yet I have not violated it. I knew the law when I wrote the sentence which is now brought to condemn me. But that sentence is removed two steps from a violation of the law. First, I have not denied even Mr. Whittemore's god. And secondly, if I had denied his god, it would not have been the "denying" of God, as mentioned in the Statute. The statute was not made to protect Mr. Whittemore's god any more than the god Juggernaut; nor so much as the god which Mr. Jefferson calls "a dæmon of malignant spirit."

I have only now to request that I may be notified when the Report is to be made; because if the verdict be sustained, and the decision should be against me, I shall claim an appeal to the Supreme Court of the United States, and wish to be in Court, to give bonds to that effect. Having said thus much I add no more.

[The Chief Justice informed me, that, whether I should be in Court or not at the time the report was made, it would make no difference as to the appeal; as I should be equally as much entitled to it out of Court as in. Here the matter rests, as yet, although it is now (April) more than five weeks since the above defence was made. We must wait therefore, the decision of the Court. But as the Court has adjourned till May next, we shall issue this defence without waiting for the decision.]

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